(16,864.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898.

No. 290.

THE CANADA SUGAR REFINING COMPANY, LIMITED, PETITIONER,

vs.

THE INSURANCE COMPANY OF NORTH AMERICA.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

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a United States Circuit Court of Appeals for the Second Circuit.

THE CANADA SUGAR REFINING COMPANY, LIMITED, Libellant, Appellee,
vs.
THE INSURANCE COMPANY OF NORTH AMERICA, Respondent, Appellant.

Transcript of Record.

Appeal from the district court of the United States for the southern district of New York.

Printed under the direction of the clerk.

[Stamped:] United States circuit court of appeals, second circuit. Filed Dec. 7, 1897. William Parkin, clerk.

1 U. S. District Court, Southern District of New York.

THE CANADA SUGAR REFINING COMPANY, LIMITED, Libellant & Appellee,
against
THE INSURANCE COMPANY OF NORTH AMERICA, Respondent & Appellant.

Statement.

1894.
Nov. 27. Libel filed.
1895.
Jan. 28. Answer filed.
1896.
Dec. 7. Cause tried before Hon. Addison Brown, U. S. district judge.
1897.
June 3. Opinion rendered directing decree to be entered for libellant, with costs.
" 15. Final decree entered.
" 16. Notice of appeal filed.

2 To the Honorable Addison Brown, district judge of the United States for the southern district of New York:

The libel and complaint of The Canada Sugar Refining Company, Limited, against The Insurance Company of North America, in a cause of contract civil and maritime, alleges and articulately propounds as follows, to wit:

First. At all the times hereinafter mentioned the libellant was, ever since has been and still is a corporation organized and existing under and pursuant to the laws of the Dominion of Canada, and there engaged in the importation of raw sugars and the refining

thereof, and that at all such times the respondent was, ever since has been and still is a corporation organized and existing under and pursuant to the laws of the State of Pennsylvania and lawfully engaged among other things in the business of marine insurance.

Second. At divers times between the 20th of January, 1893, and the 8th of February, 1893, the libellant caused to be shipped to Iloilo, for its account, by Ker & Co., of Iloilo, upon the British ship *John E. Sayre* 73,089 mats of Iloilo sugar, weighing net about 39,360 piculs, being about 2,462 tons, to be delivered at Montreal, Canada. The said sugar was shipped in three separate lots, of which bills of lading were issued of which copies are hereto annexed marked respectively A, B and C.

Third. The libellant further alleges that the net invoice cost of all such sugar was £22,152, 13/, 8d, as appears by the invoices issued therefor, copies of which are hereto annexed marked respectively D, E and F.

Fourth. The libellant further alleges that at divers dates, to wit: December 9th, 1892, and in March, 1893, and in April, 1893, it caused said sugars to be insured by the Atlantic Mutual In-
3 surance Company to cover from time to time the increased market value of said sugar, the market therefor being a rapidly rising market, and that the insurance of said sugar by the libellant with the Atlantic Mutual Insurance Company was finally completed on the 29th day of April, 1893, at $166,145, the said *John E. Sayre* then being at sea bound on her voyage from Iloilo to Montreal.

Fifth. The libellant further alleges that on the 29th day of April, 1893, the said *John E. Sayre*, being at sea as aforesaid, and the value of said sugar exclusive of freight being then about $181,000, a value in excess of the amount for which it had been purchased by the libellant, and a value in excess of the insurance placed thereon by the libellant with the Atlantic Mutual Insurance Company, the libellant caused its said profits upon the said sugar, being then valued at $15,000, to be insured by the respondent, The Insurance Company of North America, in said valued amount of $15,000, for the voyage from Iloilo to Montreal under a certificate of insurance issued to libellant, of which a copy is hereto annexed marked G.

Sixth. The libellant further alleges that Robert Hampson, by whom the said certificate of insurance was issued on behalf of the respondent, was the agent of the respondent, and that the policy of insurance No. 117,407 referred to in said certificate of insurance was an open policy of insurance under which insurance generally was written by the said Robert Hampson on behalf of the respondent in lieu of issuing policies of insurance to special persons insured. The libellant further alleges that said policy No. 117,467 is not and never has been in the possession of libellant, but has been and still is, as deponent is informed and believes, in the possession of the Insurance Company of North America or of the said Robert Hampson, its agent, and that the libellant has been unable to procure a copy of the said policy of insurance, though it has applied to the

said Robert Hampson therefor, and that the libellant is not advised as to all the terms and conditions of said policy of insurance.

4 Seventh. The libellant further alleges upon information and belief that the said ship *John E. Sayre*, being then in every way fitted for her contemplated voyage, sailed from Iloilo with said sugar on board on or about the 10th day of February, 1893, bound for Montreal; that on or about the 4th day of July, 1893, the said ship being still in prosecution of her voyage, met with heavy fog off the coast of Newfoundland, and in the early morning of July 6th during the prevalence of said fog stranded on the coast of Newfoundland about eleven miles east of Cape Ray and about one mile east of the entrance to Port au Basque harbor, and that she subsequently at said place of stranding became a total wreck. The libellant further alleges that on the 6th day of July, and immediately upon receiving advices of the distress that had come to the said ship *John E. Sayre* it informed the said underwriters thereof, and the said Atlantic Mutual Insurance Company, either by itself or in conjunction with the respondent, assumed and undertook to take such possession of said cargo as was possible, and dispatched vessels to the relief of the *John E. Sayre*, and in conjunction with the master of said vessel employed salvors to save the cargo, under an agreement as libellant is informed and believes that the salvors being resident in Newfoundland should receive one-half of said cargo or the value thereof as salvage compensation, besides which the said underwriters incurred other expenses in the employment of vessels and agents and surveyors, in addition to the obligations incurred under said agreement with the said salvors resident in Newfoundland, the amount of which expense is unknown to the libellant; that by these efforts a certain amount of said cargo, to wit: about 9,900 mats, weighing about 325 tons, were taken out of the said *John E. Sayre* by small sailing craft and landed in Newfoundland, and that pursuant to the terms of said salvage agreement the said salvors resident in Newfoundland became entitled to receive one-half thereof as salvage compensation; that thereafter as libellant is informed and believes the said insurers adjusted the claims and

5 rights of the said salvors by a cash payment to them, the exact amount of which is to deponent unknown, the same being, however, substantially one-half of said sugars, and that thereupon the said underwriters brought the said 325 tons of sugar to Montreal incurring expenses therefor, the amount of which is unknown to libellant, where it was received by the libellant, on account of and in part payment for the loss sustained by the said libellant, under its insurance with the Atlantic Mutual Insurance Company, and that credit was given therefor to the said Atlantic Mutual Insurance Company in the amount at which the said 325 tons of sugar were insured with the Atlantic Mutual Insurance Company; that the market value of the said 325 tons of sugar in Montreal at the time it was received by the libellant was about $20,000.

Eighth. The libellant further alleges that at the time of the loss aforesaid the entire shipments of sugar as aforesaid upon the said

John E. Sayre were with all the profits thereon for the account of and at the risk of the libellant, and that by reason of the premises and matters aforesaid the said profits became and were totally lost to the libellant.

Ninth. The libellant further alleges that on the 10th day of January, 1894, it caused to be submitted to the respondent a claim for the loss of said profits for examination, and that at that time and at subsequent times immediately following the libellant tendered to the respondent and to its agents and representatives all documents of which copies are hereto annexed together with a copy of the marine protest extended by the master of the *John E. Sayre*, setting forth the circumstances of the voyage, but that only certain documents, to wit: a copy of the certificate of insurance and a copy of the said protest, were retained by said respondent and its agents, the statement being then made by them that the other documents were not needed for the consideration of the claims involved.

6 Thereafter the respondent held the matter under advisement until the 6th day of August, 1894, at which time it informed the libellant that it declined paying the claim, and upon the 15th day of August, 1894, made objection that no proof of interest of the libellant in said profits had been filed, and that no proof that such profits had become a total loss had been filed, whereupon and on or about the 23rd day of August, 1894, the libellant caused complete proofs of loss to be served upon the respondent.

Tenth. The libellant further alleges that the respondent has declined to pay the claim, and that there is now due and owing to the libellant thereunder the sum of $15,000 with interest thereon from the 15th day of January, 1894.

Eleventh. All and singular the premises are true and within the admiralty and maritime jurisdiction of this honorable court.

Wherefore, the libellant prays that the respondent may be cited to appear and answer all and singular the matters aforesaid, and that judgment may be entered in favor of the libellant and against the respondent for the amount of its claim as aforesaid with interest and costs.

BUTLER, STILLMAN & HUBBARD,
Proctors for Libellant, 54 *Wall Street, N. Y. City.*

7 CITY AND COUNTY OF NEW YORK, } ss.:
Southern District of New York, }

Samuel Lee, being first duly sworn, deposes and says that he is a member of the firm of Hewlett & Lee, agents of the libellant above named, that he has read the foregoing libel and knows the contents thereof; that the same is true of his own knowledge except as to the matters therein stated to be alleged upon information and belief and that as to those matters he believes it to be true.

Deponent further says that the sources of his information and the grounds of his belief as to all matters not stated of his own knowledge are statements made and reports furnished to him by representatives of the libellant after investigation by them into the

circumstances attendant upon the matters stated in the foregoing libel, and the possession of documents relating to the same; that the reason why this verification is not made by the libellant is that it is a foreign corporation none of whose officers reside within the southern district of New York or within the United States or are capable of making this affidavit.

SAMUEL LEE.

Sworn to before me this 27th day of Nov., 1894.

WM. F. JUDSON,
Notary Public, Westchester County.

Certificate filed in N. Y. Co.

8 "A."

Shipped, in good order and well conditioned, by Ker & Co. in and upon the good Brit. ship called the *John E. Sayre* whereof is master for this present voyage, Rouse, and now lying at anchor in the port of Iloilo and bound for Montreal.

I.	3,850 mats.	Forty-three thousand five hundred mats.
II.	3,900 "	Iloilo superior sugar wg. nett 22,617.08 pcls.
III.	35,750 "	
	43,500 mats.	

being marked and numbered as in the margin; and are to be delivered in the like good order and well conditioned (all dangers and accidents of the seas excepted) at the aforesaid port of Montreal unto the Bank of Montreal, or to their assigns, he or they paying freight for the said goods at the rate of ($7¼) seven and a quarter dollars U. S. gold coin per ton of 20 cwts. nett weight delivered in full.

In witness whereof, the master or purser of the said vessel has affirmed to four bills of lading all of this tenor and date, one of which being accomplished, the others to stand void.

Dated in Iloilo 21st January, 1893.

Weight & contents unknown.

All other conditions as per charter-party.

A. T. ROUSE, *Master.*

9 "B."

Shipped, in good order and well conditioned, by Ker & Co. in and upon the good Brit. ship called the *John E. Sayre* whereof is master for this present voyage, Rouse, and now lying at anchor in the port of Iloilo and bound for Montreal.

A	1,681 mats.	Thirteen thousand six hundred and twenty-four
B	3,374 "	mats Iloilo superior sugar wg. nett 8,000 piculs.
C	8,569 "	
	13,624 mats	

being marked and numbered as in the margin; and are to be delivered in the like good order and well conditioned (all dangers and

accidents of the seas excepted) at the aforesaid port of Montreal unto the Bank of Montreal or to their assigns, he or they paying freight for the said goods at the rate of ($7½) seven and a quarter dollars U. S. gold coin per ton of 20 cwts. nett weight delivered in full.

In witness whereof, the master or purser of the said vessel has affirmed to four bills of lading all of this tenor and date, one of which being accomplished, the others to stand void.

Dated in Iloilo 1st February, 1893.

Weight and contents unknown.

All other conditions as per charter-party.

A. T. ROUSE.

10 "C."

Shipped, in good order and well conditioned, by Ker & Co. in and upon the good Brit. ship called the *John E. Sayre* whereof is master for this present voyage, Rouse, and now lying at anchor in the port of Iloilo and bound for Montreal,

I	4,030 mats.	Fifteen thousand nine hundred and sixty-five	
II	10,340 "	mats Iloilo superior sugar wg. nett	8,742.92
III	1,595 "	piculs.	
	15,965 mats		

being marked and numbered as in the margin; and are to be delivered in the like good order and well condition (all dangers and accidents of the seas excepted) at the aforesaid port of Montreal unto the Bank of Montreal or to their assigns, he or they paying freight for the said goods at the rate of ($7½) seven and a quarter dollars U. S. gold coin per ton of 20 cwts. nett weight delivered in full.

In witness whereof, the master and purser of the said vessel has affirmed to four bills of lading all of this tenor and date, one of which being accomplished, the others to stand void.

Dated in Iloilo 8th February 1893.

Weight & contents unknown.

All other conditions as per charter-party.

A. T. ROUSE.

11 "D."

British ship *John E. Sayre*, Rouse,

Montreal,

the concerned.

Messrs. The Canada Sugar Refining Co., Ltd.
Messrs. The Bank of Montreal.

Iloilo superior sugar.

I	3,850 mats, wg. net.....	1,841.73	piculs.
II	3,900 " " "	2,015.43	"
III	35,750 " " "	18,759.92	"
	43,500 mats, wg. net.....	22,617.08	piculs.

Or 1,413^{5675} tons at £10:10 p'r ton cost & freight £14,842/ 9/ 2
Less freight at $7 1/4 p'r ton=$10,248.36 U. S. gold coin at exchange of $4.85 per £..... 2,113/11/ 3

$12,729/ 7/11

E. & O. E.

Manila, 26th January, 1893.

12 "E."

British ship *John E. Sayre*, Rouse,

Montreal,

the concerned.

Messrs. The Canada Sugar Refining Co., Ltd.
Messrs. The Bank of Montreal.

Iloilo superior sugar.

A	1,681 mats, wg. net.....	1,000 piculs.
B	3,374 " " "	2,000 "
C	8,569 " " "	5,000 "
	13,624 mats, wg. net.....	8,000 piculs.

Or 500 tons at £10:10 p'r ton cost and freight..... £5,250
Less freight at $7 1/4 p'r ton = $3,625 at exchange of $4.85 per £..... 747/ 8/5

£4,502/11/7

E. & O. E.

Manila, 4th February, 1893.

KER & CO.
JAMES M. BEATTIE.

13 "F."

(Copy.)

Invoice of produce shipped by Ker & Co. on board the British ship *John E. Sayre*, Rouse, master, bound for Montreal, for account and risk of the concerned by order of Messrs. The Canada Sugar Ref'g Co., Ltd., and consigned to Messrs. The Bank of Montreal.

Iloilo superior sugar.

I	4,030 mats, wg. net.....	2,078.27	piculs.
II	10,340 " " "	5,824.57	"
III	1,595 " " "	840.08	"
	15,965 mats, wg. net.....	8,742.92	piculs.

Or 546^{4325} tons at £10.10 p. ton cost of freight... £5,737.10.10
Less freight at $7¼ p. ton=$3,961.64 at exchange of
$4.85 p. £..... 816.16. 8

£4,920.14. 2

E. & O. E.

Manila, 11th February, 1893.

KER & CO.
JAS. M. BEATTIE.

14 "G."

Marks and numbers.

Insurance Company of North America.

$15,000. Philadelphia. No. 39600.

This to certify, that on the 29th day of April, 1893, this company insured under policy No. 117,407, made for Robert Hampson, fifteen thousand and 00/100 dollars on profits on cargo sugar against total loss only valued at sum insured shipped on board of the Br. ship *John E. Sayre* at and from Iloilo to Montreal and the loss, if any subject to the terms and conditions of the policy, has been made payable to the order of Canada Sugar Ref'g Co., Ltd., on surrender of this certificate. Grentler Fryer, secretary. Wm. A. Platt, 2nd vice-pres't. Not valid unless countersigned by the company's duly authorized agent at Montreal. Countersigned at Montreal this 29th day of April, 1893.

$
at
per cent.
Premium
$

ROBERT HAMPSON, *Agent.*

Incorporated 1794.

(Endorsed:) Libel. Filed Nov'r 27, 1894.

15 To the Honorable Addison Brown, judge of the district court of the United States for the southern district of New York:

The answer of the respondent, The Insurance Company of North America, to the libel and complaint filed in this court against it by the Canada Sugar Refining Company, Limited, respectfully showeth as follows, namely:

First. This respondent admits the averments of the first article of the libel and complaint respecting the incorporation of the libellant and the incorporation of the respondent.

Second. This respondent is informed and believes that between the date mentioned in the second article of the libel, the libellant caused to be shipped at Iloilo, upon the British ship *John E. Sayre*, to be delivered to the libellant at Montreal, Canada, about seventy-three thousand and eighty-nine mats of Iloilo sugar, but as to the exact amount or weight thereof, or as to the manner of its shipment

or the bills of lading issued therefor, or as to the net invoice cost of such sugar, this respondent has no knowledge or information sufficient to form a belief.

Third. This respondent is informed and believes that the libellant caused such sugar, or some portion thereof, to be insured by the Atlantic Mutual Insurance Company, but as to the dates of such insurance, or the amount thereof, or whether such insurance was to cover from time to time the increased value of such sugar, or whether the market therefor was a rapidly rising market, this respondent has no knowledge or information sufficient to form a belief.

Fourth. This respondent admits and alleges that on or about the 29th day of April, 1893, under and by certificate of insurance issued therefor by this respondent, and of the date last mentioned,
16 the libellant caused to be insured by this respondent under its open policy of insurance No. 117,407, made and issued by it to Robert Hampson and subject to the terms and conditions thereof fifteen thousand dollars on profits on cargo of sugar against total loss only valued at the sum insured, shipped on board the British ship *John E. Sayre*, at and from Iloilo to Montreal, the loss, if any, subject to the terms and conditions of such policy, to be paid to the order of the libellant upon surrender of the said certificate. But while admitting that at the time of such insurance the value of the said sugar exclusive of freight was about one hundred and eighty-one thousand dollars this respondent has no knowledge or information sufficient to form a belief as to whether such value was in excess of the amount for which it had been purchased by the libellant, or was in excess of the insurance placed thereon by the libellant with the Atlantic Mutual Insurance Company. And this respondent avers that while as it believes Schedule "G," annexed to the libel is substantially a copy of the said certificate, yet the name of the secretary signing the same is therein incorrectly stated and for greater certainty in respect to its purport and provisions this respondent prays leave to refer to the original thereof when produced on the trial.

Fifth. This defendant is informed and believes that the said ship *John E. Sayre* sailed from Iloilo with sugar on board on or about the 10th day of February, 1893, bound for Montreal. That on or about the 6th day of July, and while in the prosecution of the voyage she stranded and became a wreck on the coast of Newfoundland; and this respondent is informed and believes that by or under direction of the master and in discharge of his duty as such and for account of whom it might concern salvage efforts were prosecuted for relief of the said *John E. Sayre* and her cargo and the partic-lars of which efforts or the terms or mode of prosecution whereof and the agreements, credits and payments, if any, made under or in respect
17 of the same are unknown to this respondent who in nowise participated therein. And this defendant also denies that such salvage efforts were by direction or authorization of or in conjunction with this respondent. And, except as in this article admitted, this respondent denies any knowledge or information sufficient to form a belief as to each and every other allegation contained

in the seventh article of said libel. And while admitting upon information and belief that the shipments of the sugar with the profits thereon were for account of and at the risk of the libellant, this respondent denies any knowledge or information sufficient to form a belief as to whether or not the said profits were totally lost to the libellant.

Sixth. This respondent further admits and avers upon information and belief, that from the wreck of said ship *John E. Sayre* there were forwarded to Montreal, the place of destination, and there delivered to and received by the libellant about nine thousand nine hundred mats of the said sugar of about three hundred and twenty-five tons net weight, and of the value of about twenty thousand dollars. This deponent further alleges that no abandonment of the subject of such insurance was ever offered or made by the libellant to this respondent; and this respondent avers and insists that by reason of that saving and delivery to the libellant of a substantial part of the said cargo as above set forth, this respondent became relieved and discharged from all liability to the libellant under or by reason of its said contract of insurance, and that the claim of the libellant in this suit cannot be maintained.

Seventh. This respondent upon information and belief denies that the sugar so delivered to the libellant was a payment by any underwriter on account of a supposed total loss. And this respondent is advised and believes that there was no total loss of profits within the intent and purport of such insurance thereof.

18 Eighth. While admitting that the libellants caused to be served upon this respondent papers purporting to be proofs of loss this respondent claims and insists that such papers failed to prove or show any liability by the respondent to the libellant.

Ninth. This respondent admits that it has declined to pay the claim of the libellant, but it denies that there is now due or owing by the respondent to the libellant the sum of fifteen thousand dollars and interest, or any sum whatever.

Tenth. This respondent is advised and believes that the allegation contained in said libel as to the agency of Robert Hampson and the possession of the policy of insurance, and the allegations contained in the ninth article of the libel, other than the allegation as to service of proofs of loss on the 23rd day of August, 1894, are all immaterial to the issues herein, and call for no denial, explanation or notice on the part of the respondent.

Wherefore, this respondent prays this honorable court to pronounce against the libel aforesaid, and to condemn the libellant in costs and otherwise law and justice to administer in the premises.

HAND & BONNEY,
Proctors for Respondent, 51 *Wall Street, New York.*

19 SOUTHERN DISTRICT OF NEW YORK, *ss:*

John S. Jeremiah, one of the firm of Catlin & Platt, being duly sworn, says that he is an attorney-in-fact of The Insurance Company of North America, the above-mentioned respondent; that he has

read the foregoing answer and knows the contents thereof, and that the same is true to the best of his knowledge, information and belief. That the reason this verification is not made by the respondent is that such respondent is a foreign corporation, and that neither of its officers resides or is within this district. That deponent's knowledge and information are derived from documents, letters and information received from the officers of the respondent, and from papers and information received from the libellant.

JOHN S. JEREMIAH.

Subscribed and sworn to this 28th day of January, 1895, before me,

W. D. DESPARD,
[L. S.] *Notary Public, Kings County.*

Certificate filed in New York county.

(Endorsed:) Answer. Filed Jan'y 28, 1895.

20 United States Circuit Court, Southern District of New York.

CANADA SUGAR REFINING CO.
vs.
THE INSURANCE COMPANY OF NORTH AMERICA.

Transcript of Judge Brown's Minutes of Trial.

Libellant offered deposition of George A. Drummond.
All objections reserved.
Deposition of A. T. Rouse, and Exs. A, B and C.
October 10, 1895, bill of lading.
Deposition of Aug. W. Harvey and R. E. Pike & exs., St. John.
Offers policy of Atlantic Mutual Company. Ex. 9.
Received subject to objection.
The libellant desires to prove further by Drummond that when he took out a policy on profits he advised the defendant that he had a policy of $166,145 on the sugar with the Atlantic Mutual Company.
Admitted that Mr. Drummond would so testify if present, with the privilege to the defendant to contradict that testimony, if desired.
Proof of loss offered; served on defendant company August 23, 1894, Ex. 10.
Admitted that these papers were served on that day, and that they are sufficient if the libellant is entitled to recover on the merits.
Copy of policy No. 117,407 issued by respondent produced and marked Ex. 11.
Defendant offers no proofs.
Both rest.

21 District Court of the United States for the Southern District of New York.

CANADA SUGAR REFINING COMPANY, Libellant,
against
THE INSURANCE COMPANY OF NORTH AMERICA, Respondent.

Deposition of George Alexander Drummond, taken this ninth day of November, 1896, pursuant to notice, at the office of Messrs. Butler, Notman, Joline & Mynderse, No. 54 Wall street, New York city.

Present: Mr. Mynderse, for libellant.
Mr. Bonney, for the respondent.

GEORGE ALEXANDER DRUMMOND, being duly sworn and examined as a witness for the libellant, testifies:

By Mr. MYNDERSE:

Q. Where is your residence, Mr. Drummond?
A. Montreal, Canada.
Q. What is your association with the Canada Sugar Refining Company?
A. I am president of that company.
Q. How long have you been president of that company?
A. I should think—I really don't remember; certainly twenty years nearly.
Q. That company is a manufacturing corporation?
A. Yes.
Q. Engaged in the refining of sugars?
A. Yes.
Q. What did that company have to do with a cargo of the *John E. Sayre*, shipped at Manilla?
A. We bought it.
22 Q. From whom?
A. Ker & Company.
Q. How did you pay for it?
A. It was paid for by a credit granted by the Bank of Montreal.
Q. (Handing witness papers.) Are these the invoices of the shipments?
A. Yes; I take them to be so.
Q. And do those invoices show the purchase price?
A. They do.

The three papers are marked respectively Libellant's Ex. 1, 2, and 3 of this date.

Q. (Handing witness papers.) I show you these papers, heretofore marked Exhibits A, B, and C of October 15, 1895, and ask you if those are the bills of lading covering the shipment?
A. Yes, they are.
Q. From whom, or through whom, did you receive these bills of lading?

A. The bills of lading I have no doubt came through the Bank of Montreal.

Q. And were taken up by you on paying the credit?

A. On paying the credit.

Q. Do you recall how early you purchased this sugar?

A. I do not; it is usually purchased by cable, but I forget the date of this; it was somewhere in the end of 1892.

Q. When did you first effect any insurance on the sugar, either by application or by formal policy?

A. We applied on the 9th of December, 1892, for insurance in the Atlantic Mutual Insurance Company.

Q. On what amount, or at what rate?

A. For the invoices' value, at the rate of $6.50 to the pound sterling; the total amounts stipulated by them not to exceed $185,000.

Q. At that time you did not know what the invoice value would be?

A. We knew what the invoice price would be, but no one could tell how much the ship would carry.

Q. You only knew the price per ton?

A. Only the price per ton.

Q. You say you arranged with them to insure you for the prospective invoice price at $6.50 per pound sterling?

A. Yes.

23 Q. Will you state whether that is the usual rate of allowance?

A. It is a very common rate.

Q. And intended to cover what?

A. It covers not only the invoice cost, but it covers the cost of the credit and the cost of the insurance against marine risks and the interest; all insurance questions.

Q. Did you afterwards make a change in this insurance with the Atlantic, or increase it in any way?

A. The market value of sugars began to rise considerably, and on the 30th of March we applied to the Atlantic for additional insurance, which was granted by them by increasing the value of the pound sterling to $7.50 instead of $6.50.

Q. Was that afterwards modified further, or what was done in the matter of taking out the policy?

Mr. BONNEY: I object to these dealings with the Atlantic, and except to them as immaterial, irrelevant and incompetent.

A. Still our interest at market valuations not being satisfied by that enhancement of the insurance by the Atlantic we effected a further insurance with the Insurance Company of North America, Philadelphia, in a round sum of $15,000.

Q. Prior to the time of taking out this insurance with the Insurance Company of North America, had your arrangements with the Atlantic crystallized at all?

A. Oh, I have no doubt they granted us a policy upon the terms already mentioned.

Q. That is, at the rate of $7.50 per pound sterling?

A. Yes.

Q. Do you recall the exact amount of that policy, whether it was $166,145?

A. $166,145 I think.

Q. That was the invoice of values of the sugar as per the invoices which we have seen, at the rate of $7.50?

A. Yes.

Q. Do you recall the date that that policy bore?

A. It must have been about the end of April I should think, but I am not very certain.

24 Q. You have spoken of taking out insurance with the Insurance Company of North America in the amount of $15,000?

A. Yes, sir.

Q. (Handing witness paper.) Is that represented by the certificate of insurance I now show you?

A. Yes, sir.

Mr. MYNDERSE: This the original.

The paper is marked Libellant's Ex. 4 of this date.

Q. What was the occasion of taking out this insurance of $15,000?

A. The reason for it?

Q. Yes.

Same objection as heretofore stated.

A. The amount covered by the Atlantic was not sufficient.

Q. The sugar had increased in value?

A. Yes.

Q. Mr. Drummond, in these invoices I see that in each of them the sugars are styled "Iloilo superior sugars" and of grades 1, 2 and 3, or grades A, B, and C; are those grades of uniform value?

A. Approximately as near as can be. That is to say, the No. 1 grade is a recognized grade, No. 2 grade is a recognized grade, and No. 3, is a recognized grade; No. 1 being the more valuable of the three, No. 2 next, and No. 3 the lowest quality.

Q. What I mean is, is there a difference between the values of Nos. 1 and 2 and Nos. 2 and 3?

A. Yes, but these sugars are sold in the markets under the description of "usual assortment" meaning one-eighth of the whole shipment to be No. 1, two-eighths to be No. 2 and five-eighths to be No. 3.

Q. And then the price is for——

A. The price is approximate, an average of the whole; based upon that average.

Q. Based upon such assortment?

A. Yes, the usual assortment.

Q. And the price is upon the aggregate weight?

A. The aggregate weight, as a whole.

25 Q. When did you first learn of the disaster to the *John E. Sayre?*

A. She went ashore on the 6th of July, 1893.

Q. When did you learn of that, do you recall?

A. We must have learned it on the 7th of July.
Q. Do you recall how you learned it?
A. I don't at the moment.
Q. What did you do upon learning it?
A. Immediately upon hearing it we telegraphed to the Atlantic Mutual Insurance Company; I think it was in the public prints it appeared first.
Q. Can you give me the language of your telegram of the 7th of July to the Atlantic Mutual?

Same objection as heretofore stated.

A. Our telegram as follows:

"The *John E. Sayre* reported ashore off coast of New Foundland."
(Signed) "REDPATH."

Q. Redpath is your cable or telegraph address?
A. Yes.
Q. (Handing witness paper.) Did you receive from the Atlantic Mutual any response to the telegram, and if so state whether this is it?

Mr. Bonney now states that he objects to all dealings with the Atlantic Mutual.
Mr. Mynderse states that of course all these proofs in respect to the Atlantic are taken subject to Mr. Bonney's objections, without the necessity of his renewing them further.

A. That is the letter.

The letter is marked Libellant's Ex. No. 5 of this date.

Q. Did you subsequently receive a further letter from them, and if so under what date?
A. The 10th of July we received that letter.

The letter referred to is produced and marked Libellant's Exhibit 6 of this date.

26 Q. Did you communicate with the Atlantic later?
A. Yes.
Q. On what day?
A. We telegraphed them on the 14th of July.
Q. What did you telegraph them?
A. We telegraphed that we had been offered, or inquiries were being made in Montreal as to the value of sugars similar to those carried by the *John E. Sayre*.
Q. Can you give me the language of the telegram?
A. This is the telegram:

"Sugar supposed *ex John E. Sayre* being offered here by brokers representing Newfoundland parties."
(Signed) "REDPATH."

Q. Did you confirm that at all by any letter of the same day?
A. I think so.
Q. (Handing witness paper.) Is this a copy of the letter?
A. This is a copy of the letter, yes.

The letter is marked Libellant's Exhibit No. 6*x* of this date.

Q. Did you receive replies by telegram and by letter from the Atlantic Mutual?
A. Yes.
Q. (Handing witness papers.) Are these the original telegram and letter?
A. Yes.

The telegram is marked Libellant's Exhibit No. 7 of this date, and the letter is marked Libellant's Exhibit No. 8 of this date.

Q. What was the next you heard of this sugar or any part of it?
A. The sugar was shipped to Montreal by the steamer *Tiber*. We were advised of that by the Atlantic—that it was coming.
Q. About how much of it?
A. Something over three hundred tons.
Q. Was that sugar consigned to you?
A. No; shipped to the Atlantic Mutual Insurance Company.
Q. What was done respecting that sugar?
A. When it arrived the Atlantic sent a representative to
27 Montreal, who received it and subsequently handed it over to us on a settlement.
Q. From Mr. Darragh?
A. Yes.
Q. On what basis of value did you receive that sugar from Mr. Darragh; do you remember?
A. I am not very sure; I think we took it approximately at its insured value, if I remember rightly.
Q. Was any examination made by you of the grades of the sugar which arrived, as to whether it was 1, 2 and 3 or not?
A. Impossible to do that; we took it as an average.
Q. It has been shown that certain of these bags of sugar were wet; was there any attempt by you made to adjust any item of loss in that respect accurately, with Mr. Darragh?
A. I don't think so.
Q. You took the whole thing in its existing condition and grade and quality?
A. Yes, we accepted it.
Q. At its insured value?
A. On—I think so.
Q. Well, was its actual value, in its existing grades and condition and quality substantially the same as the value insured in the Atlantic?
A I think most likely that we settled it on the nearest approach to a fairly equitable basis that we could reach.
Q. Did either you or the Atlantic try to stand on technical or legal grounds?

A. No, for very obvious reasons. If it had come to a market like this it could have found buyers, but in Montreal there was practically only one buyer.

Q. Is there no market there for sugar?

A. Not for such sugars.

Q. How do manufacturers get sugar there?

A. They have to bring it there themselves, by buying it outside.

Q. Then, as I understand, you took these sugars over from Mr. Darragh at their insured value, as fairly representing the then actual value?

A. Yes.

Q. What kind of sugar is this Iloilo sugar?

A. A low brown sugar averaging probably, take the three qualities together, a polarization of 82½ to 83 per cent. of crystallizable sugar.

Q. Had you any transactions whatever with the owners of the *John E. Sayre?*

A. None.

28 Q. Had you had any communication with them respecting the forwarding of the sugar?

A. No.

Q. Who attended to that?

A. The Atlantic Mutual Insurance Company.

Q. Did you have any arrangements with the Atlantic respecting the handling of the sugar other than appears in this correspondence?

A. Nothing whatever; they told us that they had made certain arrangements and that is how we knew about it.

Q. Do you recall what the freight on the *Tiber* was for bringing the sugar forward from Newfoundland?

A. I do not—$1,327.51 was paid by us.

Q. That was at the rate of four dollars a ton?

A. (After examining papers.) Exactly so.

Q. What was the rate of freight per ton on the *John E. Sayre*, do you recall?

A. I think it was £1/10 per ton.

Q. $7.25 (handing witness paper to refresh his recollection)?

A. Yes, that is it; $7.25 per ton.

Q. Do you know who arranged the freight matters with the *John E. Sayre* respecting the sugars that came forward?

A. The Atlantic Mutual Insurance Company.

Q. Will you state whether you made any allowance to them in respect to the difference between the four dollars and the $7.25 per ton freight?

A. I think the difference was settled for in the settlement with Mr. Darragh.

Q. It was charged against you?

A. Yes, the original freight was charged.

Q. You say you paid the freight to the *Tiber* four dollars a ton; under what arrangement was that with Mr. Darragh?

A. Under the agreement we made with him for settling the whole

matter. I forget now; we accepted the sugar on a certain basis of settlement.

Q. Who was the agent of the Insurance Company of North America in Montreal?

A. I think Robert Hampson.

Q. Will you state whether you had any conferences or con-
29 versation with him during the period that this vessel was ashore in Newfoundland?

A. Nothing very important; I think he was in the office once or more times, and we gave him all the information we had, but I won't swear to anything specific on that matter.

By Mr. BONNEY:

Q. You don't remember, Mr. Drummond, anything that was said?

A. I don't remember anything very specific about it.

By Mr. MYNDERSE:

Q. You did see him, though?

A. Oh, I saw him, yes; he was very well known to us, and in and out of the office very frequently.

Q. Will you state that the position of the vessel and cargo was discussed by you and him upon the information then in your hands?

A. Yes, and he got everything we knew from time to time.

Q. What do you consider as to your legal rights in respect to this sugar when it came on to Montreal?

Objected to as immaterial, incompetent and irrelevant.

A. Practically the sugar was in the possession of the Atlantic Mutual Insurance Company, was their property; but as its coming to Montreal would have brought it to a place where practically there was no market for it we were obliged, or considered ourselves entitled to deal with it apart from any question of legal rights, on an equitable basis. We consequently arrived at a settlement as nearly mutually satisfactory as we could.

Q. When that sugar came there did you think it was yours or theirs?

Same objection.

A. It was theirs.

Cross-examined by Mr. BONNEY:

Q. The price that you say you paid for this sugar was the current market price?

A. At the time that this action was entered into.

Q. At the time the purchase was made?

A. At the time the purchase was made.

30 Q. To whom was this three hundred or so tons of sugar that was saved after the wreck of the *Sayre* shipped in Montreal?

A. It was shipped to the Atlantic Mutual Insurance Company.

Q. In the name of the Atlantic Mutual Insurance Company?

A. In the name of the Atlantic Mutual Insurance Company by their agent in Newfoundland.

Q. Has the Atlantic Mutual Insurance Company an office, had it a person to receive in its name in Montreal?

A. No; they sent a special representative to Montreal to await the arrival of the ship and deal with the sugar, Mr. Darragh.

Q. Did you ever see the bills of lading?

A. I must have seen them I dare say, but probably in the hands of Mr. Darragh; but I can't say for certain.

Q. For what length of time was Mr. Darragh in Montreal?

A. Oh, I should think probably a number of days; I couldn't say; I have known him to stay in Montreal for a fortnight about such matters, but how many days he was here about this particular matter I do not know.

Q. Are you sure that that sugar was not shipped to you, or to your company?

A. Quite sure.

Q. Or any part of it?

A. Or any part of it.

Q. You said that the party dealing with the owners of the *Sayre* with respect to the cargo was the Atlantic Mutual Insurance Company?

A. Yes.

Q. This you know from hearsay I suppose?

A. I know it from the communications of the Atlantic and the fact that we had nothing to do with it in any shape or form.

Q. Your company gave no directions whatever as to any dealing with the cargo after the wreck?

A. None whatever.

Q. I don't quite understand what you said about certain additions made to the price, which entered into and formed a part of the general purchase price.

Mr. Mynderse states that the value of the pound sterling was so fixed in insurancing for the purpose of covering bankers' commissions, interest, insurance premiums, etc.

31 Q. Is that the usual method of dealing with purchases of this kind?

A. It is the usual method of dealing with insurance bases on the pound sterling.

Redirect examination by Mr. MYNDERSE:

Q. What became of the policy of insurance that was issued to you by the Atlantic Mutual on this cargo?

A. As soon as they settled it was surrendered to them, as usual.

Q. Is this certificate of insurance the only document that you received from the Insurance Company of North America?

A. I think that is the only document we received; yes, sir.

(Signed) GEO. A. DRUMMOND.

32 United States District Court, Southern District of New York.

CANADA SUGAR REFINING COMPANY, Libellant,
vs.
THE INSURANCE COMPANY OF NORTH AMERICA, Respondent.

Deposition of Alphonso T. Rouse, a witness produced, sworn, and examined pursuant to notice, on behalf of the libellant, before Charles Flynn, notary public, at the office of Butler, Stillman & Hubbard, 54 Wall street, New York, on the 15th day of October, 1895.

Present: Messrs. Butler, Stillman & Hubbard (Mr. Mynderse), for the libellant.
Messrs. Hand & Bonney (Mr. Bonney), for the respondent.

ALPHONSO T. ROUSE, being duly sworn and examined as a witness for the libellant, testifies as follows:

By Mr. MYNDERSE:

Q. What is your full name?
A. Alphonso Troop Rouse.
Q. What is your age?
A. Forty.
Q. Where is your present home?
A. Bia Blancha, South America; I represent a steamship company there.
Q. When do you propose returning there?
A. On about the 20th of October.
Q. Do you know the barque *John E. Sayre?*
A. Yes, I was captain of her for ten years and owned a piece of her; captain and part owner of her.

33 Q. Where did she hail from?
A. St. John, New Brunswick.
Q. Who was the managing owner?
A. F. E. Sayre, St. John.
Q. Were you master of the *John E. Sayre* in the year 1893?
A. Yes, sir.
Q. Do you remember taking a cargo of sugar on her at Iloilo?
A. Yes, sir.
Q. When did you load that cargo?
A. I think it was in January and a portion of February; we sailed from there on the 10th of February.
Q. (Handing witness paper.) Are these the bills of lading for the cargo?
A. Yes, sir; that is my signature.

The bills of lading are offered in evidence and marked respectively, Exhibits A, B, and C of this date.

Q. About what was the weight of the cargo?
A. Well, as near as I can remember now, I think it was 2,460 tons; 2,460 or 2,465 tons.

Q. And that was to be carried where?

A. To Montreal.

Q. And freight was to be paid according to the terms of the bills of lading?

A. According to the terms of the bills of lading.

Q. What became of the *John E. Sayre* on that voyage?

A. Well, somewhere, I think it was in July, we went ashore on the south coast of Newfoundland in a little place called Channel, one mile east of Channel.

Q. What was the condition of the weather at that time?

A. It had been blowing very heavy for three or four days; but there wasn't very much wind when she went ashore; it had been thick fog for about four weeks; very thick when she went ashore.

Q. What kind of a place was it that she went ashore; what kind of a coast?

A. Terrible reefs and rocks; it was dotted with reefs; take a boat you would have to go in and out, in and out, to get her away clear of the reefs.

Q. Did she go ashore fast, or how?

A. No, we was going slow; had some of our sails pulled out, waiting to see if we couldn't get the sun.

34 Q. I mean, was she fast ashore?

A. Oh, yes, she went right up between those two reefs and struck there; she went up at high tide.

Q. What became of her?

A. Well, I was on shore about two hours before I knew where I was; when it cleared up a little bit the fishing-boats came off and told me I was close to Channel in a very dangerous place.

Q. Did you make any efforts to save the vessel?

A. Yes.

Q. Were you able to save her?

A. The fishermen advised us to leave her at once; but I arranged with the crew to stay by till the weather got worse, and try to save what we could; in fact I ran lines and kedge anchors and one thing another, you know; we tried to get her off the reef. I sent a boat out with the mate and one hand, with the lead line, and sounded around for deep water. We got everything in readiness to try to ger her off when the tide rose agaain.

Q. Were you able to relieve her when the tide rose?

A. We broke the hatches out, you know. I thought she was sitting on the middle of the reef, and if I broke out the after end of her and tipped the cargo over she might come off; we worked at the hatches and pumps till she filled right up.

Q. What effect did the filling have on the cargo?

A. Of course it damaged the cargo when we started to fill.

Q. What was done with the cargo in the way of saving it?

A. We landed all we could. I made arrangements with the salvors to save all we could, and they was to get half of what they saved.

Q. Who were these salvors?

A. Fishermen around shore.

Q. And they saved whatever cargo was taken out?

A. Yes, it was saved by the salvors; it was more or less damaged of course.

Q. What agreement did you make for their compensation?

Objected to as immaterial, irrelevant and incompetent.

A. They was to have half.

35 Q. Do you consider that that was a reasonable arrangement?

Objected to on the same grounds as before, and further that the competency of the captain to testify as to the reasonableness of the compensation has not been shown.

A. I consider it a reasonable compensation for this reason; that the vessel was filling fast and the longer the cargo remained on board the sooner it would be destroyed, and they could save all they liked, because if they didn't save it at once it would be melted.

Q. What danger was there in rendering the salvage services?

A. Oh, there was considerable; a heavy surf around all the time; they had to do it with small boats, and anchored their schooners nearly a mile from the vessel.

Q. Were your crew able to remain on the vessel?

A. No, they were frightened and I had to send them ashore.

Q. How far was your vessel from shore?

A. About a mile to the east of Channel. Part of the time there was nobody on board of the ship but myself and the fishermen, some sixty or seventy fishermen; the crew wouldn't stay.

Q. Because of the danger?

A. They were frightened; the sea was washing all over the vessel. I might say a stewardess also stayed; she was the only man among the crew.

Q. About how much cargo was taken out by the salvors?

A. As near as I can judge, about 300 tons more or less.

Q. You never weighed it?

A. No, no, I never weighed it.

Q. This is just a judgment you formed as it went out?

A. Yes, sir, I averaged so many bags to a ton; but a great many of them bags wasn't over half full; some of them were washed out and spilt.

Q. Your best judgment is it was somewhere in the vicinity of 300 tons?

A. Yes.

36 Q. Did you have anything to do with the cargo after it went ashore?

A. Yes, I made arrangements for storing it; landing it out of the schooners and storing it.

Q. Then what became of it?

A. The Atlantic Insurance Company sent their representative around there and took charge of it.

Any testimony as to the Atlantic Insurance Company is objected to as immaterial and irrelevant, and any testimony hereafter taken

respecting any agreement as to salvage compensation and service, or connection of the Atlantic Insurance Company, is taken subject to objection, on the same ground as above stated.

Q. Do you recall the name of the representative of the Atlantic Insurance Company?

A. I think it was Pike; a Mr. Pike.

Q. Did he come from St. John, Newfoundland?

A. He came from St. John, Newfoundland, and he reimbursed me.

Q. Had you incurred some expenses?

A. Yes.

Q. In about what amount?

A. In the vicinity of $300.

Q. To what extent did Mr. Pike reimburse you?

A. He gave me $200 in cash.

Q. What became of the sugar?

A. It was left in his charge.

Q. Who adjusted accounts with the salvors?

A. I think Mr. Sayre—no, I don't know that.

Q. With the salvors of the sugar in Newfoundland I mean.

A. I don't know that, because Mr. Pike took charge of the cargo, and of course I paid two or three hundred dollars expenses on landing and storing it, which he paid me back, or two hundred of it he paid me back; well, that was all I knew, about the cargo; I was done with it then.

Q. You left it then in his hands?

A. I left it then in his hands.

Q. Who attended to forwarding it to Montreal?

A. I couldn't tell you that.

Q. Do you know how it went to Montreal?

A. I think it went on the steamer *Tiber*.

37 Q. But do you know on what terms it was redeemed from the salvors?

A. Well, I suppose it was on my agreement; I agreed for one-half.

Q. Do you know who paid the storage expenses and matters of that kind?.

A. Mr. Pike of course.

Q. Do you know whether he settled with the salvors?

A. Yes, he settled with the salvors, and I did hear that——

Objected to.

(The witness continues:) I did hear that the salvors kept a portion of the sugar for their services.

Q. You did hear that they were paid part in cash and part in sugar?

A. I did hear that they were paid part in cash and part in sugar.

Counsel for respondent objects to the answer as mere hearsay, and incompetent, and moves that it be stricken out.

The WITNESS: I know that to be a fact.

Q. You say those arrangements were made by Mr. Pike?
A. Yes.
Q. Did you have anything to do with the redeeming of the cargo from the salvors, or with the forwarding it?
A. No.
Q. You left that entirely in the hands of Mr. Pike?
A. Yes.
Q. You can't say what amount of expenses and disbursements he paid in settling with the salvors, or in forwarding the cargo?
A. No, no.
Q. How about the freight of the *John E. Sayre* on these 300 odd tons that were saved; how was that adjusted, and with whom; did you have anything to do with that?
A. No, I had nothing to do with that whatever.
Q. Do you know between whom it was adjusted?
A. Between Mr. Sayre and the Atlantic Insurance Company, I think.
Q. Between Mr. Sayre, who was the managing owner of the vessel, and the Atlantic Mutual Insurance Company?
A. Yes.
38 Q. The *John E. Sayre* herself became a total loss on the rocks there?
A. Yes, she was sold for $170.

Cross examination by Mr. BOSSEY:

Q. When did you cease to have to do with the cargo, Captain?
A. Well, when I was paid this $200 on account, and instructed to give the cargo up by my owner.
Q. That was about when?
A. Well, I couldn't tell you the date; it was one or two days, or perhaps three days after the ship was stranded, but the date I don't just remember.
Q. So that what you have testified to as to arrangements made for salvage services and salvage compensation, and arrangements made by Mr. Pike, are what you have heard by report, and not from your own knowledge?
A. Well, the arrangements——
Q. Can't you answer that?
A. I made the arrangement with the salvors myself; Mr. Pike settled it.
Q. Well, what you have testified to as having been done by Mr. Pike is what you have heard from him, and not what you know of your own knowledge?
A. What I have heard; yes.
Q. And not of your own knowledge?
A. No, not of my own knowledge; but my arrangement was made in regard to the salvage and the storage before Mr. Pike came there, and the cargo was held for instructions, or subject to instructions.
Q. When did you leave the vessel?

A. I left her when the last of the sugar had been saved; when the last of the cargo was out.

Q. I think you have stated that the occasion of the accident to the *Sayre* was dense fog?

A. The dense fog.

Redirect examination by Mr. MYNDERSE:

Q. The $200 which you referred to in your cross-examination was paid by Mr. Pike?

A. Paid by Mr. Pike.

Q. And you say you had instructions from your owner; those were instructions to turn the cargo over to Mr. Pike?

39

A. Yes; I was going to forward the cargo myself to Montreal.

Q. And then you left the entire adjustment of matters with Mr. Pike?

A. With Mr. Pike; yes, sir.

Q. He came from St. John's, Newfoundland?

A. From St. John's, Newfoundland.

Q. From the office of Harvey & Company?

A. Yes, sir.

Q. They are the agents in Newfoundland of the Atlantic Insurance Company?

A. Yes, sir.

Q. You have spoken of the circumstances of your going ashore; are those circumstances truly set forth in your protest?

A. Yes, sir.

Q. (Handing witness paper.) Is this a copy of the protest?

A. Yes, sir; that is a copy of the protest.

The paper is offered in evidence and marked Exhibit D of this date.

Recross-examination by Mr. BONNEY:

Q. What was this $200 paid you for?

A. On account of disbursements.

Q. Who do you say was acting as agent for the Atlantic?

A. This Mr. Pike was sent there by Harvey & Company, of St. John's, Newfoundland; st-amship agents.

Q. How do you know that they were acting as agents for the Atlantic Company?

A. Well, we have letters and telegrams; he brought a letter from Mr. Harvey that he was their representative; well, then when I wouldn't take any notice of him there was telegrams from New York here, instructing me to give the cargo up.

Q. Telegrams from whom?

A. From the Atlantic Company.

Q. To you?

A. Yes, sir; I was holding the cargo, intending to send it to Montreal, and then later there was a telegram——

Q. Have you those telegrams?

A. No, sir; I might possibly find them by hunting around. I think I cleared out all my old papers.

District Court of the United States, Southern District of New York.

CANADA SUGAR REFINING COMPANY, Libellant,
against
THE INSURANCE COMPANY OF NORTH AMERICA, Respondent.

Interrogatories Propounded to Augustus W. Harvey, Pursuant to a Commission Issued Herein.

First interrogatory. What is your name, age, residence and occupation?

A. My name is Augustus W. Harvey. I am fifty-six (56) years old. I reside in St. John's, Newfoundland, and am a merchant. I am a partner in the firm of Harvey and Company.

Second interrogatory. What was your occupation or business connection in July and August, 1893? If you were a member of any firm or copartnership, state the name of such firm and what its business was.

A. My occupation in July and August, 1893, was that of a merchant; I was a partner in the firm of Harvey & Co. We carry on the business of commission and general merchants.

Third interrogatory. Did you have anything to do with the cargo of the *John E. Sayre* in July and August, 1893? If yea, state whether the same was pursuant to any instructions and if in writing produce said instructions and state from whom they came and upon what date, and if not in writing, or if you are unable to produce any written instructions, state what such instructions were and from whom and at or about what date they were given to you.

41 A. In July and August, 1893, I had something to do with the cargo of the *John E. Sayre*. My connection with the cargo of the *John E. Sayre* was through instructions from the Atlantic Mutual Insurance Company of New York. These instructions were by telegraph. The first communication which I received from the Atlantic Mutual Insurance Company was a telegram dated and received July 7th, 1893, which I now produce and put in evidence. (Marked A. W. H., 1.) I replied to this telegram. I have not the original reply in my possession. I produce and put in evidence a copy of my reply. (Marked A. W. H., 2.) On July 8th, 1893, I received another message from the same company, which I now produce and put in evidence. (Marked A. W. H., 3.) I replied to this by a telegram, a copy of which I now produce and put in evidence. (Marked A. W. H., 4.) On July 10th, 1893, I received a message from the same company, which I now produce and put in evidence. (Marked A. W. H., 5.) To this I replied by a telegram on July 12th, 1893, a copy of which I now produce and put in evidence. (Marked A. W. H., 6.) On the 12th July, 1893, I also re-

ceived a message in reply to mine of the same date, which I produce and put in evidence. (Marked A. W. H., 7.) On July 13th, 1893, I received a telegram from the same company, which I produce and put in evidence. (Marked A. W. H., 8.) On July 26th, 1893, I sent a message to the same company, a copy of which I produce and put in evidence. (Marked A. W. H., 9.) To this I received a reply on the same date, which I produce and put in evidence. (Marked A. W. H., 10.) On July 31st, 1893, I sent a message, a copy of which I produce and put in evidence. (Marked A. W. H., 11.) To this the company replied on the same date by a telegram, which I produce and put in evidence. (Marked A. W. H., 12.) On August 11th, 1893, I sent to the same company a telegram, a copy of which I produce and put in evidence. (Marked A. W. H., 13) On the same date I received from the same company a telegram in reply, which I produce and put in evidence. (Marked A. W. H., 14.) This is the only correspondence between Harvey & Co. and the Atlantic Mutual Insurance Company on the subject of the cargo of
42 the *John E. Sayre*, except some letters which are merely formal confirmations of the telegrams. I produce the copies of the telegrams which I sent to the Atlantic Mutual Insurance Company. I have not the originals now. I have made enquiries for the originals at the office of the Anglo-American Telegraph Company, and after search I find that they have been destroyed. The Anglo-American Telegraph Company does not keep such messages after six months. The copies which I produce and attach to my deposition are correct copies of the original messages as sent by me to the Atlantic Mutual Insurance Company.

Fourth interrogatory. What did you do with respect to the said cargo? Did you see any of it removed from the *John E. Sayre*, and if yea, upon what dates? What was done with said cargo?

A. We appointed—Harvey & Co. appointed—Captain Robert G. Pike as our representative at Channel, Port-au-Basque, Newfoundland, the scene of the wreck of the *John E. Sayre*. He was an employee of ours. I did not see any of the cargo removed from the wreck. The saved cargo was stored at Channel, Port-au-Basque, and was shipped from thence to Montreal.

Fifth interrogatory. What was the quantity of such cargo and what was its condition? Can you state under what agreement or agreements of salvage said cargo was taken from the vessel, and if yea, state what the same were.

A. I do not know what was the quantity of the whole cargo, or what was its exact condition. I do not know of my own knowledge under what agreement for salvage the cargo was taken from the vessel. I only know these things from the report of Captain Pike.

Sixth interrogatory. Did you have to do in any way with the adjustment of salvage? If yea, state with whom you dealt in making such adjustment and give the names of the salvors. What was the number of sacks and the gross weight thereof saved by each salvor, and what was the net weight? If you have any schedule or
43 accounts setting forth these facts, please produce them and state whether they are correct and annex them to your depo-

sition. State whether these are the original accounts, and if yea state to whom the same were rendered and when they were rendered. Whence do they now come?

A. We had to do with the adjustment of the salvage by and through Captain Robert G. Pike, the person sent by us to act as our representative at the place of the wreck, as before mentioned. I do not know the names of the salvors, except as furnished to our firm by Captain Pike. I produce and put in evidence an account or schedule of the salvage. (Marked A. W. H., 15.) This is the account from Harvey & Co., to the Atlantic Mutual Insurance Company of New York and was transmitted by us to them after the saved part of the cargo had been shipped to Montreal. It is the document signed by Harvey & Co., and dated at St. John's, August 17th, 1893. This Exhibit "A. W. H., 15" headed "Sheet No. 1," is an account of the sugar saved, salvors getting one-half. This is a correct account and is the account rendered to the Atlantic Mutual Insurance Company of New York by Harvey & Co., on August 17th, 1893. Since its transmission I have not seen it until produced by Mr. Emerson, Q. C., counsel for the libellant, on this commission. I also produce and put in evidence an account of the sugar saved from the *John E. Sayre* on a salvage of one cent per pound. (Marked A. W. H., 16.) This Exhibit, "A. W. H., 16," headed "Sheet No. 2," is the account rendered by Harvey & Co., to the Atlantic Mutual Insurance Company of New York, in August, 1893. I have not seen it since its transmission until produced on this commission by counsel for libellant. It is the account sent by us and is correct.

Seventh interrogatory. State in what way the adjustment with the salvors was made. If you say that you purchased from the salvors any portion or share of the said sugar, state what portion or share you so purchased and the amount thereof and the price paid therefor, and state whether the said facts correctly appear in
44 the said accounts produced by you. If salvage in respect to any of the cargo was settled upon a different basis, state upon what portion of the cargo such adjustment was made and the basis thereof, and give the names of the salvors, the weight of the cargo so affected and the sums paid by you? Do the same correctly appear in any of the accounts already produced by you, and if yea, state upon which account?

A. For a portion of the salvaged cargo, the salvors were given one-half of the sugar saved. Another portion was saved upon an agreement for one cent per pound. We purchased the salvors' share of one-half from the salvors at the prices set out in Exhibit A. W. H. 15, and stated in the column "price per lb." These were the various prices paid to the salvors for their share of the salvaged cargo. It was paid for according to its condition, at prices varying from two and a half cents per pound to one-half cent per pound. The facts of the amounts purchased by us for the underwriters, and the prices paid therefor, all appear in the account produced and already in evidence, A. W. H. 15. The only other basis of salvage was under the agreement for one cent per pound to certain salvors, whose names appear in the account already in evidence, Exhibit

A. W. H. 16. The names of the salvors and the weights of the cargo thus saved appear in the said account A. W. H., 16. This account correctly shows the whole transaction of the salved portion of the sugar for which one cent per pound salvage was paid to the salvors.

Eighth interrogatory. State whether you incurred any expense other than the amounts paid by you to the salvors, for storage, weighing or reconditioning said cargo or for reshipping it, or otherwise? If yea, state what was the occasion for such expenses, and the amount thereof? Have you any account thereof? If yea, produce the same and state whether it is a true account and to whom rendered and upon what date?

A. We had to incur expenses for the storage, weighing, reconditioning and reshipping of the salved sugar, for telegrams, for Captain Pike's board and lodging at Channel, and for certain barrows and scales employed. We also paid Cap-
45 tain Rouse for his expenses at Channel. I produce an account (marked A. W. H. 16*a*) which is an account furnished by us to the Atlantic Mutual Insurance Company of New York, of the amount paid to the salvors, as in the statements already put in evidence and marked A. W. H. 15, and A. W. H. 16, and also of the amounts paid for the storage at Channel, for the weighing expenses, for the use of barrows and scales in connection with the landing and weighing of the sugar, for labor in shipping the sugar by the S. S. *Tiber* to Montreal, an amount paid to Captain Rouse of two hundred dollars ($200), an amount paid the magistrate at Channel for attesting certain bills, and amounts paid for two hundred sacks for reconditioning the sugar, for sundry cablegrams, and for the commission of Harvey & Company, on the estimated value of the cargo recovered from the *John E. Sayre*—the whole account amounting to ten thousand and sixty-six dollars and ninety-seven cents ($10,066.97). For this amount we drew on the Atlantic Mutual Insurance Company by a three days' sight draft, adding thereto the bank charges, which made ten thousand one hundred and sixty-seven dollars and sixty-four cents ($10,167.64). This account A. W. H. 16 (*a*) is a correct account of all the disbursements made by us on account of the cargo shipped.

Ninth interrogatory. State whether the charges in said account are, in your opinion, reasonable and customary, and state whether the said account has been paid, and if yea, by whom and upon what date.

A. The charges in the accounts sent by us to the Atlantic Mutual Insurance Company of New York are reasonable and customary, and the said accounts were paid by the Atlantic Mutual Insurance Company in 1893.

Tenth interrogatory. What became of the said sugar? If you say the same was forwarded to Montreal, state the circumstances under which it was forwarded and when and by what means of transportation the said sugars were so forwarded and by whom. Were bills of lading issued therefor? If yea, state by whom
46 the same were issued and to whom, and what became of them. Can you now produce the said bills of lading, or any

of them? If yea, please do so and have them annexed to your deposition. From whom have you received such bills of lading?

A. The saved sugar was shipped from Channel, Port-au-Basque, Newfoundland, on board the S. S. *Tiber* to Montreal. It was shipped by Captain R. G. Pike, our representative before mentioned. Bills of lading for the sugar were issued by Captain De Lisle of the S. S. *Tiber*. The bills of lading I now produce and put in evidence. (Marked A. W. H., 17; A. W. H., 18; A. W. H., 19.) These are the original bills of lading. These bills of lading have been put into my hands by Mr. Emerson, Q. C., counsel for libellant, and I recognize them as the original bills of lading of the sugar saved from the *John E. Sayre*, and shipped to Montreal by the S. S. *Tiber*, for and on account of the Atlantic Mutual Insurance Company of New York on the dates of these bills of lading, by our representative at Channel, Captain Robert G. Pike. The instructions which I gave Mr. Pike were all carried out. Some of these were direct to Pike, and others were through Captain Delaney, of the S. S. *Grand Lake*. Both Pike and Delaney were in the employ of the Coastal Steamship Company, of which we are the proprietors. Nothing was done by Captain Pike unless by our instructions, and everything he did was under our instructions and authority.

Eleventh interrogatory. Do you know of any other matter or thing material to the issues of this action and of advantage to the libellant? If yea, state the same as fully and particularly as though specially interrogated in relation thereto.

A. My other partners are Joseph Outerbridge and John Hoovey. They know nothing more about this matter than I do. I was the partner having the special management of this particular business of the *John E. Sayre*. My partners could not give any more information on the matter than I have given.

47 First cross interrogatory. If in answer to the direct interrogatories you state that you had anything to do with the cargo of the *John E. Sayre* in July and August, 1893, please state whether or not you were an owner or agent of the said vessel. And if not such an owner or agent, please state who then were the owners or agents and their residences and whether or not you communicated with them prior to action on your part respecting such cargo?

A. I was not an owner or an agent of the vessel *John E. Sayre*. I do not know who the owners were, and had no communication with them either directly or indirectly, either before or after our action on behalf of the Atlantic Mutual Insurance Company of New York.

Second cross-interrogatory. If in answer to the direct interrogatories you state that you did anything with respect to the cargo of the *John E. Sayre*, please state whether your action was by authority or with concurrence of the owners or agents of the vessel and give the particulars of this authorization or concurrence, and, if in writing, annex copies of the same?

A. My action in connection with the cargo of the *John E. Sayre*, was with the authority and concurrence of the Atlantic Mutual In-

surance Company of New York and not under any authority form the owners or agents of the vessel.

Third cross-interrogatory. If in answer to the direct interrogatories you state that agreements for or respecting salvage of the cargo were made, please state between whom the same were made and whether or not by authority or with the concurrence of the master or owners of the vessel and give the particulars of such authorization and whether or not the same were in writing. If the same were in writing, please annex copies thereof, and if not in writing, please state whether or not made in your presence and by and between whom?

A. I was informed that the captain of the *John E. Sayre* had made the arrangements for the salvage acting on behalf of all concerned; but we adopted his agreements afterwards on behalf of the Atlantic Mutual Insurance Company, and paid the salvors on behalf
48 of the said company, according to the agreements made by the captain of the *John E. Sayre*. I do not know if the agreements were in writing or verbal.

Fourth cross-interrogatory. If in answer to the direct interrogatories you state that you participated in the settlement with salvors, state who, if any one else, participated therein and whether such settlement was wholly or in part in writing, and, if in writing, please annex to your answers such writing or a copy thereof. And if you state that you purchased from salvors any portion or share of the saved sugar, state whether or not such so-called purchase was part of the settlement and was anything else or more than payment of their salvage claims in money instead of in share or part of the sugar?

A. After Captain Robert G. Pike took charge of the cargo under our instructions, as before stated no one participated in the settlement with the salvors except ourselves, through our representative Captain Pike. Our purchase from the salvors of their portion was as before stated, and was a purchase of their share, which had been delivered to them.

Fifth cross-interrogatory. If in answer to the direct interrogatories you state that the sugar saved from the *John E. Sayre* was in whole or in part forwarded to Montreal, state to whom at Montreal the same was thus forwarded. And do you know or recollect the quantity of sugar thus forwarded? And if you do not, annex the bills of lading therefor, please state what name appeared therein as shipper and what name as consignee?

A. The sugar from the *John E. Sayre* was forwarded to Montreal, to the order of the Atlantic Mutual Insurance Company of New York, as will appear from the bills of lading (Exhibits "A. W. H., 17," "A. W. H., 18," and "A. W. H., 19"), and the quantities of sugar shipped will appear from the same exhibits. We shipped the sugar to the order of the Atlantic Mutual Insurance Company of New York.

Sixth cross-interrogatory. Between the time of learning of
49 the wreck of the *John E. Sayre* and the forwarding of the cargo saved therefrom to Montreal, had you any communica-

tion with or from the Canada Sugar Refining Company, the libellant in this case? If you received any letters or telegrams from such company or its officers or agents, please annex to your answers such letters or telegrams or copies thereof. If you sent to such company or its officers or agents any letters or telegrams, please annex to your answers copies thereof. If you had interviews with any officer or agent of the company during that period, please state with whom and when and where and what was said at such interviews?

A. I had at no time, either before or after the wreck of the *John E. Sayre*, any communication with the Canada Sugar Refining Company or any of its officers or agents. I sent no letters or telegrams to, and received none from, the Canada Sugar Refining Company or any of their officers or agents, at any time, and at no time had I any interview with any of their officers or agents.

Seventh cross-interrogatory. Between the time of learning of the wreck of the *John E. Sayre* and the forwarding of the cargo saved therefrom to Montreal, did you have any conversation with any officer of the Atlantic Mutual Insurance Company? And if so, when and where did such conversation occur and what was said thereat?

A. Between the time of learning of the wreck of the *John E. Sayre*, and the forwarding of the cargo saved therefrom to Montreal, I had no conversation with any officer of the Atlantic Mutual Insurance Company. My only communications with the company were as before stated.

Eighth cross-interrogatory. Do you know of any other matter or thing material to the issues of this action that may tend to the advantage of the respondent, The Insurance Company of North America? If yea, state the same fully and at large as though particularly interrogated in respect thereto.

A. I do not know of any such matter or thing.

50 District Court of the United States, Southern District of New York.

CANADA SUGAR REFINING COMPANY, Libellant,
against
THE INSURANCE COMPANY OF NORTH AMERICA, Respondent.

Interrogatories Propounded to R. G. Pike, Pursuant to a Commission Issued Herein.

First interrogatory. What is your name, age, residence and occupation?

A. My name is Robert G. Pike. My age is thirty-six (36). I reside in St. John's. My occupation at present is that of purser of the steamer *Grand Lake*. I was formerly a master mariner. I have been purser of the *Grand Lake* for about three years.

Second interrogatory. What was your occupation or business connection in July and August, 1893? If you were a member of

any firm or copartnership, state the name of such firm and what its business was.

A. In July and August, 1893, I was purser on the steamer *Grand Lake*, belonging to the Coastal Steamship Company.

Third interrogatory. Did you have anything to do with the cargo of the *John E. Sayre* in July and August, 1893? If yea, state whether the same was pursuant to any instructions, and if in writing, produce said instructions and state from whom they came and upon what date, and if not in writing, or if you are unable to produce any written instructions, state what such instructions
51 were and from whom and at or about what date they were given to you.

A. I had something to do with the cargo of the *John E. Sayre* in July and August, 1893. I was acting under instructions from Harvey & Company, received at Channel, Port-au-Basque, on board the *Grand Lake*. These instructions were by telegraph from St. John's. I have those written telegraphic instructions now, and I received other instructions from Harvey & Co. through Captain Delaney, the captain of the steamer *Grand Lake*, of which I was purser. I produce the telegrams from Harvey & Co. and attach them to my evidence. (Marked "R. G. P., 1.")

Fourth interrogatory. What did you do with respect to the said cargo? Did you see any of it removed from the *John E. Sayre*, and if yea, upon what dates? What was done with said cargo?

A. When I arrived at Channel, Port-au-Basque, I found some of the sugar in schooners and some in store. All the cargo had been removed from the *John E. Sayre* when I arrived in Channel, Port-au-Basque. I arrived there on Saturday, July 8th, 1893, about 7 p. m.

I had all of the cargo taken out of the schooners and put in the stores. I then weighed it and gave the salvors their share. I then bought the salvors' share, under instructions from Harvey & Co. at the prices named in the accounts. A quantity of bags were sent on from St. John's. I had the whole cargo reconditioned and rebagged where it was necessary, and subsequently had it shipped by the S. S. *Tiber* to Montreal.

Fifth interrogatory. What was the quantity of such cargo and what was its condition? Can you state under what agreement or agreements of salvage said cargo was taken from the vessel, and if yea, state what the same were?

A. The net weight of the cargo saved and shipped was three hundred and thirty-four (334) tons, twelve (12) cwt., two (2) qrs., one (1) lb. It was all shipped in good condition except a small quantity which was wet.
52 The agreements for the salvage were as follows: For a small portion there was paid one cent per pound to the salvors, and for the balance the salvors were paid half they landed, in kind.

Sixth interrogatory. Did you have to do in any way with the adjustment of salvage? If yea, state with whom you dealt in making such adjustment and give the names of the salvors? What was the

number of sacks and the gross weight thereof saved by each salvor, and what was the net weight? If you have any schedule or accounts setting forth these facts, please produce them and state whether they are correct, and annex them to your deposition. State whether these are the original accounts, and if yea, state to whom the same were rendered and when they were rendered. Whence do they now come?

A. I had everything to do with the adjustment of the salvage after I arrived there. The agreements for the salvage were made by the captain of the *John E. Sayre* before I arrived. The captain stated to me what those agreements were. They were as I have stated. After the cargo was weighed on shore, I adjusted the salvage with the salvors, and dealt directly with them.

I produce an account (marked "R. G. P., 2") showing the names of the salvors in the first column, the number of sacks in the second column, the gross weight in the third column, the tare in the fourth column, the net weight in the fifth column, the salvors' shares in the sixth column, the price per pound in the seventh column, the amount of such price in the eighth column, the check number in the ninth column, the weighing expenses in the tenth column, the storage expenses in the eleventh column, and in the twelfth column, remarks. This and the account which I am about to produce in a moment are the original accounts made out by me and furnished afterwards to Messrs. Harvey & Co., the agents for the underwriters. This account, R. G. P., 2, is an account of the sugar that was saved on the halves, the salvors' half of which was afterwards purchased by me at the prices mentioned in the seventh column. I
53 made out these accounts myself and handed copies of them in to Harvey & Co. These are the original accounts, and copies of them were rendered to Harvey & Co. immediately upon my return to St. John's. This account which I now produce has been in my possession ever since, and I now produce it and attach it to my evidence. (Marked "R. G. P., 2.")

I also produce and attach to my deposition (marked R. G. P., 3) the account of the portion of the saved cargo for which the salvors received one cent per pound. In the first column of this account are the names of the salvors, in the second the number of sacks, in the third the gross weight, in the fourth the tare, in the fifth the net weight, in the sixth the price paid the salvors, one cent per pound, in the seventh the amount of this price, in the eighth the check number, in the ninth the weighing expenses, in the tenth the storage expenses, and in the eleventh column remarks. Both these accounts which I have put in are correct. This is the original account. It was made up by me, a copy supplied to Harvey & Co. on behalf of the underwriters, and rendered to them immediately on my return to St. John's in August, 1893. It has been in my possession ever since, and I now produce it and attach it to my evidence. (Marked R. G. P., 3.)

Seventh interrogatory. State in what way the adjustment with the salvors was made? If you say that you purchased from the salvors any portion or share of the said sugar, state what portion or

share you so purchased and the amount thereof and the price paid therefor, and state whether the said facts correctly appear in the said accounts produced by you? If salvage in respect to any of the cargo was settled upon a different basis, state upon what portion of the cargo such adjustment was made and the basis thereof, and give the names of the salvors, the weight of the cargo so affected and the sums paid by you? Do the same correctly appear in any of the accounts already produced by you, and if yea, state upon which account?

54 A. The adjustment for the salvors was made as set forth in the account. I purchased the portion of the salvors who received half, at the rates set forth in column seven of R. G. P., 2, and I paid them the amounts set forth in column eight of the same exhibit. I made this purchase under Harvey & Co.'s instructions. Messrs. Harvey & Co. were acting on behalf of the Atlantic Mutual Insurance Company. The other portion of the cargo which was saved I paid the salvors for at the rate of one cent per pound. The facts in connection with the adjustment of the salvage all appear in the two accounts which I have produced, R. G. P., 2, and R. G. P., 3, and these accounts are correct in every particular.

Eighth interrogatory. State whether you incurred any expense other than the amounts paid by you to the salvors for storage, weighing or reconditioning said cargo or for reshipping it, or otherwise? If yea, state what was the occasion for such expenses and the amount thereof? Have you any account thereof? If yea, produce the same and state whether it is a true account and to whom rendered and upon what date?

A. The expenses incurred by me are all set forth in these accounts, R. G. P., 2, and R. G. P., 3, except the amount paid to Capt. Rouse, viz: $200 paid to him by Harvey & Co. through me; my own board at Channel, $20; an amount paid to the magistrate at Channel for attesting bills, $125; costs of 200 sacks for rebagging sugar, $40, and any cablegrams, all of which items were paid direct by Harvey & Co. except my board and the fees to the magistrate. These items will all appear in the account of Harvey & Co. with the Atlantic Mutual Insurance Co.

The expenses which I incurred on account of storage, wharfage, reconditioning and reshipping the sugar will all appear in the accounts which I have produced, R. G. P., 2, and R. G. P., 3. I rendered copies of all these accounts to Harvey & Co. on my return to St. John's in August, 1893. The accounts are correct.

Ninth interrogatory. State whether the charges in said accounts are in your opinion reasonable and customary, and state
55 whether the said account has been paid, and if yea, by whom and upon what date?

A. All these accounts are reasonable and customary charges and were all paid by me in August, 1893.

Tenth interrogatory. What became of the said sugar? If you say the same was forwarded to Montreal, state the circumstances under which it was forwarded and when and by what means of transportation the said sugars were so forwarded and by whom?

Were bills of lading issued therefor? If yea, state by whom the same were issued and to whom, and what became of them? Can you now produce the said bills of lading or any of them? If yea, please do so and have them annexed to your deposition. From whom have you received such bills of lading?

A. The sugar was shipped by the S. S. *Tiber* and forwarded to Montreal. Bills of lading were issued for the sugar, drawn up by me. (Witness is shown three exhibits attached to the evidence of A. W. Harvey, and marked respectively A. W. H., 18, A. W. H., 19, and saith:) I recognize these three as the bills of lading of the sugar from the *John E. Sayre*, shipped by the S. S. *Tiber* from Channel to Montreal—shipped by Harvey & Co. to Montreal, to the Atlantic Mutual Insurance Co. of New York—signed by the captain of the *Tiber*, John De Lisle. These are the original bills of lading. I have not seen them since. One set was given to Captain De Lisle, one set was sent on to Harvey & Co., and another set (all counterparts) was forwarded to the Atlantic Mutual Insurance Co. of New York. They were all drawn up by me.

Eleventh interrogatory. Do you know of any other matter or thing material to the issues of this action and of advantage to the libellant? If yea, state the same as fully and particularly as though specially interrogated in relation thereto?

A. I was acting under the instructions of Harvey & Co., who were agents for the Atlantic Mutual Insurance Co. of New York.

First cross-interrogatory. If in answer to the direct interrogatories you state that you had anything to do with the cargo of the
56 *John E. Sayre* in July and August, 1893, please state whether or not you were an owner or agent of the said vessel. And if not such an owner or agent, please state who then were the owners or agents and their residences and whether or not you communicated with them prior to action on your part respecting such cargo?

A. I was not an owner or agent of the said vessel, but occupied the position stated in my examination-in-chief. I do not know who the owners were. My instructions were to look after the cargo on behalf of the underwriters.

Second cross-interrogatory. If in answer to the direct interrogatories you state that you did anything with respect to the cargo of the *John E. Sayre*, please state whether your action was by authority or with concurrence of the owners or agents of the vessel and give the particulars of this authorization or concurrence and, if in writing, annex copies of the same?

A. My authority for what I did in connection with the cargo was the instructions of Messrs. Harvey & Co., and everything I did was with their concurrence as agents of the Atlantic Mutual Insurance Co. of New York.

Third cross-interrogatory. If in answer to the direct interrogatories you state that agreements for or respecting salvage of the cargo were made, please state between whom the same were made and whether or not by authority or with the concurrence of the master or owners of the vessel and give the particulars of such

authorization and whether or not the same were in writing. If the same were in writing, please annex copies thereof and if not in writing, please state whether or not made in your presence and by and between whom?

A. The agreement for salvage was made with the captain before I arrived at Channel, Port-au-Basque. It was not in writing, it was verbal. I learned it both from the captain and from the salvors. There was never any question between the captain and the salvors as to the agreement. I only carried out the agreement, it was settled before I arrived.

57 Fourth cross-interrogatory. If in answer to the direct interrogatories you state that you participated in the settlement with salvors, state who, if any one else, participated therein and whether such settlement was wholly or in part in writing, and, if in writing, please annex to your answers such writing or a copy thereof. And if you state that you purchased from salvors any portion or share of the saved sugar, state whether or not such so-called purchase was part of the settlement and was anything else or more than payment of their salvage claims in money instead of in share or part of the sugar.

A. There was no settlement in writing with the salvors, it was all verbal. I weighed the sugar and checked it. The salvors were present during the weighing. I calculated the amount due to them and drew an order on Harvey & Co., for the payment. I purchased the salvors' portion as before stated. It was not a part of the settlement, but a purchase of their part of the said goods. We purchased their share of the sugar.

Fifth cross-interrogatory. If in answer to the direct interrogatories you state that the sugar saved from the *John E. Sayre* was in whole or in part forwarded to Montreal, state to whom at Montreal the same was thus forwarded. And do you know or recollect the quantity of sugar thus forwarded? If you do not annex the bills of lading therefor, please state what name appeared therein as shipper and what name as consignee.

A. The saved sugar of the *John E. Sayre* was forwarded to Montreal, and was shipped as will be seen by the bills of lading, to the Atlantic Mutual Insurance Co., of New York. The quantities of sugar will appear in the same bills of lading, annexed to the deposition of A. W. Harvey. The shippers of the sugar were Harvey & Co., and the consignees were the Atlantic Mutual Insurance Co., of New York, as will appear by the bills of lading, which are correct.

Sixth cross interrogatory. Between the time of learning of the wreck of the *John E. Sayre* and the forwarding of the cargo
58 saved therefrom to Montreal, had you any communication with or from The Canada Sugar Refining Company, the libellant in this case? If you received any letters or telegrams from such company or its officers or agents, please annex to your answers such letters or telegrams or copies thereof. If you sent to such company or its officers or agents any letters or telegrams, please annex to your answers copies thereof. If you had interviews with any officer or agent of the company during that period, please state

with whom and when and where and what was said at such interviews.

A. I never at any time had any communication with the Canada Sugar Refining Co., and never heard of them in connection with the matter. My instructions were from Harvey & Co., to act for the underwriters. I got no letters from, nor sent any to, the Canada Sugar Refining Co., or their officers or agents, nor had any interview with their officers or agents at any time.

Seventh cross-interrogatory. Between the time of learning of the wreck of the *John E. Sayre* and the forwarding of the cargo saved therefrom to Montreal, did you have any conversation with any officer of the Atlantic Mutual Insurance Company? And if so, when and where did such conversation occur and what was said thereat?

A. I had no communication with any officer of the Atlantic Mutual Insurance Co., of New York, except with Harvey & Co., who, I understood, were the agents of the Atlantic Mutual Insurance Company of New York.

Eighth cross-interrogatory. Do you know of any other matter or thing material to the issues of this action that may tend to the advantage of the respondent, The Insurance Company of North America? If yea, state the same fully and at large as though particularly interrogated in respect thereto.

A. The place where the cargo was shipped was called Channel. That is the town, and the harbor is called Port-au-Basque.

59 LBT.'s EX. 1. Nov. 9, '96.

British ship *John E. Sayre*, Rouse,

Montreal,

the concerned.

Messrs. The Canada Sugar Refining Co., Ltd.
Messrs. The Bank of Montreal.

Iloilo superior sugar.

I.	3,850 mats, wg. net	1,841.73 piculs.	
II.	3,900 " " "	2,015.43 "	
III.	35,750 " " "	18,759.92 "	
	43,500 mats, wg. net.....	22,617.08 piculs.	
Or 1,413$^{56}/_{75}$ tons at £10:10/ p'r ton cost & freight		£14,842	9 2
Less freight at $7 1/4 p'r ton=$10,248.36 U. S. gold coin at exchange of $4.85 p'r £.....		2,113	1 3
		£12,729	7 11

E. & O. E.

Manila, 26th January, 1892.

60 LBT.'s EX. 2. Nov. 9, '96.

British ship *John E. Sayre*, Rouse,

Montreal,

the concerned.

Messrs. The Bank of Montreal.

Iloilo superior sugar.

A	1,681 mats, wg. net.....	1,000	piculs.
B	3,374 " " "	2,000	"
C	8,569 " " "	5,000	"
	13,624 mats, wg. net.....	8,000	piculs.

Or 500 tons at £10.10/ per ton cost and freight..... £5,250
Less freight at $7¼ per ton = $3,625 at exchange of
$4.85 per £..... 747 8 5

£4,502 11 7

E. & O. E.

Manila, 11th February, 1893.

61 LBT.'s EX. 3. Nov. 9, '96.

Invoice of produce shipped by Ker & Co. on board the British ship *John E. Sayre*, Rouse, master, bound for Montreal, for account and risk of the concerned by order of Messrs. The Canada Sugar Ref'g Co., Ltd., and consigned to Messrs. The Bank of Montreal.

Ilcilo superior sugar.

I.	4,030 mats, wg. net.....	2,078	27	piculs.
II.	10,340 " " "	5,824	57	"
III.	1,595 " " "	840	08	"
	15,965 mats, wg. net.....	8,742	92	piculs.

Or 546^{4325} tons at £10.10/ p. ton cost & freight... £5,737 10 10
Less freight at $7 1/4 p. ton=$3,961.64 at exchange
of $4.85 p. £..... 816 16 8

£4,920 14 2

E. & O. E.

Manila, 11th February, 1893.

p. pro KER & CO.
JAS. M. BEATTIE.

62 LBT.'s EX. 4. Nov. 9/96.

Marks and numbers.

Insurance Company of North America.

$15,000. Philadelphia. No. 39600.

This is to certify, that on the 29th day of April, 1893, this company insured under policy No. 117,407, made for Robert Hampson, fifteen thousand dollars on profits on cargo sugar against total loss only, valued at sum insured, shipped on board of the Br. ship *John E. Sayre*, at and from Iloilo to Montreal, and the loss, if any, subject to the terms and conditions of the policy, has been made payable to the order of Canada Sugar Ref'g Co., Ltd., on surrender of this certificate.

WM. A. PLATT,
2nd Vice-Pres't.

TRENTLER FRYER, *Secretary.*

Not valid unless countersigned by the company's duly authorized agent at Montreal.

Countersigned at Montreal this 29th day of April, 1893.

ROBERT HAMPSON, *Agent.*

$
@ per cent.
Premium
8

Incorporated 1794.

63 LBT.'s EX. 5. Nov. 9/96.

Office of the Atlantic Mutual Insurance Company.

NEW YORK, *July 7th*, 1893.

Canada Sugar Rfg. Co., Montreal, Canada.

GENTLEMEN: Your telegram of this date has been received advising that the *John E. Sayre* is ashore off the coast of Newfoundland. We had previously received the information and communicated with Messrs. Harvey & Co., of St. Johns, N. F., who, in reply, sent us the following telegram, viz:

"Ordered coastal steamer *Grand Lake*, now due channel, render assistance."

Very respectfully, yours ob't serv't,

A. A. RAVEN,
2d V. Pres't.

LBT.'s Ex. 6. Nov. 9/96.

Office of the Atlantic Mutual Insurance Company.

NEW YORK, *July 10th*, 1893.

The Canada Sugar Refining Co., Montreal, Canada.

GENTLEMEN: Your letter of the 7th inst. is received.

As to the empty bags ex *Wandrahm*, we do not think there will be value enough to warrant the expense of sending them to Montreal. You are at liberty to make whatever disposition of them you see fit.

Regarding the *John E. Sayre*, our latest information is that all the sugar between decks has been saved and we hope to arrange to have it sent to Montreal.

Very respectfully, your ob't serv't,

A. A. RAVEN,
2d V. Pres't.

64 LBT.'s Ex. 6x. Nov. 9/96.

"Copy."

MONTREAL, *14th July*, 1893.

The Atlantic Mutual Insurance Co., New York.

GENTLEMEN: We have within the last day or two been repeatedly asked to offer for sugar by Newfoundland parties.

Today an enquiry was received for our best price for about 200 tons of Iloilo sugar ex *John E. Sayre* from Archibald & Co., North Sydney.

We gave no answer to those persons, but advise you by telegraph that your local agent at North Sydney may protect your interests.

We are your obedient servants,

THE CANADA SUGAR RFG. CO. (LTD.),
(Signed) W. W. WATSON, *Sec'y.*

LBT.'s Ex. 7. Nov. 9/96.

(Telegram.)

FROM NEW YORK, 14 *July*, 1893.

To Redpath, Mtl., Can.:

Have not authorized sale; master of *Sayre* agreed to give salvors one-half sugar. We have directed all forwarded to Montreal, allowing one cent pound salvage.

A. A. RAVEN,
2nd V. Pres't.

65 LBT.'S EX. 8. Nov. 9/96.

Office of the Atlantic Mutual Insurance Company.

NEW YORK, *July* 14, 1893.

Canada Sugar Refining Co., Limited, Montreal, Canada.

GENTLEMEN: We annex copies of telegrams passed between us, this day, regarding sugar *ex John E. Sayre.* The master of the vessel agreed with the salvors to give them one-half the sugar saved as salvage. Our correspondent at St. Johns offered to purchase their half and forward the whole to Montreal.

It is quite likely that the salvors, not satisfied with the offer made to them, are endeavoring to ascertain whether more money cannot be made by selling their share of the sugar in Montreal.

We would state, that the offer to pay them one cent per pound for salvage in lieu of giving them one-half the sugar, was suggested by the master, and acceded to by us.

Very respectfully, your ob't serv't,

A. A. RAVEN,
2d V. Pres't.

(Telegrams.)

Received:

"Sugar, supposed *ex John E. Sayre,* being offered here by brokers representing Newfoundland parties."

Sent:

"Have not authorized sale. Master of *Sayre* agreed to give salvors one-half sugar. We have directed all forwarded to Montreal, allowing one cent pound salvage."

67 EXHIBIT 10.

CITY AND COUNTY OF PHILADELPHIA, } ss:
State of Pennsylvania, }

Henry N. Paul, Jr., having been duly sworn according to law, deposes and says that on August 23d, 1894, at 11 o'clock a. m., he duly served original proofs of loss of insurance upon profits made to the president and directors of the Insurance Company of North America by the Canada Sugar Refining Company, Limited, upon the said insurance company, by handing a document of which the annexed is a true and exact copy, to Charles Platt, president of the corporation, entitled the president and directors of the Insurance Company of North America, which said service was made at the office of the said company, No. 232 Walnut street, Philadelphia.

HENRY N. PAUL, JR.

Sworn and subscribed before me this 23d day of August, A. D. 1894.

[SEAL.] WILLIAM E. TOLAN,
Notary Public.

FOLDOUT(S) IS/ARE TOO LARGE TO BE FILMED

Consulate general of the United States of America for the province of Quebec, Montreal, Canada.

I, the undersigned, vice-consul general of the United States of America for the province of Quebec, do hereby certify and make known that William McLennan whose signature is signed to the annexed instrument in writing is and was at the signing of the same an acting notary public in and for the province of Quebec, residing at Montreal, commissioned and authorized to act as such, and that full faith and credit are due to his official acts.

68 Given under my hand and seal of this consulate general, at Montreal, this 20th day of August, A. D. 1894.

[SEAL.] P. GORMAN,
Vice-consul General of the United States of America.

Proof of loss of insurance upon the profits made to the president and directors of the Insurance Company of North America by the Canada Sugar Refining Company, Limited.

DOMINION OF CANADA, } ss:
City and District of Montreal, }

Be it known that on this twentieth day of August, 1894, before me, William McLennan, a notary public, legally qualified, duly commissioned and sworn, and residing in the said city of Montreal, and the province and district aforesaid, personally appeared William Wallace Watson who, being duly sworn according to law, deposes and says that the following statement and papers therein referred to contain a particular, just and true statement of loss of the Canada Sugar Refining Company, Limited, to the best of his information and belief.

First. That said Canada Sugar Refining Company, Limited, is a corporation organized and existing under the laws of the Dominion of Canada, and that deponent is and at all the times hereinafter mentioned was the secretary of said Canada Sugar Refining Company, Limited.

Second. That at divers dates between the 21st day of January, 1893, and the 8th day of February, 1893, the said Canada Sugar Refining Company caused to be shipped at Iloilo for its account, by Ker & Company of Iloilo, upon the British ship *John E. Sayre* 73,089 mats of Iloilo sugar weighing net about 39,360 piculs, being about 2,462 tons, to be delivered at Montreal, Canada.

69 The said sugar was shipped in three separate lots, for which bills of lading are hereto annexed marked respectively "A," "B," and "C."

That the net invoice cost or value of said sugar was £22,152/13/8, copies of the invoice therefor being hereto annexed marked respectively "D," "E," and "F."

That said cargo was insured by the said Canada Sugar Refining Company, Limited, in the Atlantic Mutual Insurance Company of New York, at divers dates, December 9, 1892, and in March, 1893, and in April, 1893, to cover from time to time the increased market

value of the said sugar, the market therefor being a rapidly rising market; the total insurance thereon by the said Canada Sugar Refining Company, Limited, with the Atlantic Mutual Insurance Company being finally completed on the 29th day of April, 1893, at $166,145.

Third. That on the 29th day of April, 1893, the value of the said sugar, exclusive of freight, being then about $181,000, and largely in excess of the amount for which it had been purchased by the said Canada Sugar Refining Company, Limited, and largely in excess of the insurance placed thereon by the Canada Sugar Refining Company, Limited, with the Atlantic Mutual Insurance Company ($166,145), the said Canada Sugar Refining Company, Limited, caused its said profits upon the said sugar, being then valued at $15,000, to be insured by the president and directors of the Insurance Company of North America in said valued amount of $15,000 for the voyage from Iloilo to Montreal, under a certificate of insurance issued to said Canada Sugar Refining Company, Limited, of which a copy is hereto annexed marked "G." That said certificate appears to be issued under policy No. 117,407 made by the said Insurance Company of North America in favor of Robert Hampson.

That deponent is informed and believes that said Robert Hampson is the agent of the Insurance Company of North America, and that the said policy is an open policy in his favor under which insurance generally is written by the said Robert Hampson on
70 behalf of the said Insurance Company of North America.

That said policy No. 117,407 is not and never has been in the possession of deponent, but has been and is now, as deponent is informed and believes, in the possession of the Insurance Company of North America, or of Robert Hampson, its agent, for which reason no copy of the said policy can be now produced.

Fourth. Deponent further says, upon information and belief, that the said ship *John E. Sayre*, being then in every way fitted for her contemplated voyage, sailed from Iloilo with said sugar on board on or about the 10th day of February, 1893, bound for Montreal.

That on or about the 4th day of July, 1893, the said ship, being still in good condition, met with heavy fog off the coast of Newfoundland and, in the early morning of July 6th, during the prevalence of said fog, stranded on the coast of Newfoundland, about eleven miles east of Cape Ray, and about one mile east of the entrance to Port-au-Basque harbor, where she subsequently became a total wreck.

A copy of the protest of the master of said ship is hereto annexed marked "H."

Fifth. That on the 7th day of July and immediately upon receiving advices of the distress which had come to the said ship, *John E. Sayre*, said Canada Sugar Refining Company, Limited, informed the underwriters thereof, and the said Atlantic Mutual Insurance Company, either by itself or in conjunction with the said Insurance Company of North America, assumed and undertook to take such possession of said cargo as was possible, and dispatched vessels to

the relief of the *John E. Sayre* and, in conjunction with the master of the said vessel, employed salvors to save cargo, under an agreement by which the said salvors, resident in Newfoundland, were to receive one-half of said cargo, or of the value thereof, as salvage compensation, besides which the said underwriters incurred
71 other expenses in the employment of vessels and agents and surveyors, in addition to the obligations incurred under said agreement with the salvors, resident in Newfoundland, the amount of which expense is unknown to deponent.

That by these efforts a certain amount of said cargo, to wit, about 9,900 mats, weighing about 325 tons, were taken out of the said *John E. Sayre* by small sailing craft, and landed in Newfoundland.

That pursuant to the terms of the said salvage agreement the said salvors resident in Newfoundland became entitled to receive one-half thereof, or of the value thereof, as salvage compensation.

That thereafter, as deponent is informed and believes, the said insurers adjusted the claims and rights of the said salvors, by a cash payment to them, the amount of which is to deponent unknown; and that then the said under-riters brought the said 325 tons of sugar to Montreal, incurring expenses therefor, the amount of which is unknown to deponent, where it was received by the said Canada Sugar Refining Company, Limited, on account of and in part payment for the loss sustained by the said Canada Sugar Refining Company, Limited, credit being given to the insurers therefor, in the amount at which the said sugar was insured.

Sixth. That the value of the said 325 tons of sugar in Montreal was about $20,000.

Seventh. Deponent further says that at the time of the loss aforesaid, the entire shipments of sugar, as aforesaid, upon the said *John E. Sayre* were, with all the profits thereon, for the account of and at the risk of the said Canada Sugar Refining Company, Limited, and that by reason of the premises and matters aforesaid, the said profits were totally lost to deponent; wherefore the Canada Sugar Refining Company, Limited, claims by reason of said loss and damage and insurance the full sum of $15,000, being the amount of loss sustained by it as aforesaid.

72 Eighth. Deponent further says that on the 10th day of January, 1894, it caused to be submitted to the said Insurance Company of North America a statement, of which a copy is hereto annexed, marked "I," to which the said Insurance Company of North America responded with a letter, of which a copy is hereto annexed, marked "J," and that in accordance with the request contained in said letter, deponent caused his attorneys, Messrs. Butler, Stillman & Hubbard, of New York, to confer, on or about the 11th day of January, 1894, with the said Mr. Catlin and with his counsel, to whom they were referred; and that at that time all of the documents, of which copies are hereto annexed, were proffered to the said Insurance Company of North America and its counsel; but the only certain documents, to wit, a copy of the certificate of insurance, now marked "G," and a copy of the protest, now marked "H," were accepted or retained by said insurance company and its counsel,

the statement being then made by them that the other documents were not needed for the consideration of the questions involved.

That no decision was announced by said Insurance Company of North America respecting its liability for the loss claimed by the said Canada Sugar Refining Company, Limited, upon profits, until August 6, 1894, although they were frequently requested to announce their decision in respect to their liability; and that upon said 6th day of August, 1894, they caused a letter, of which a copy is hereto annexed, marked "K," to be addressed to the said Messrs. Butler, Stillman & Hubbard, attorneys for the Canada Sugar Refining Company, Limited; and that on the 16th day of August, 1894, said insurance company for the first time made objection that no proof of interest of the said Canada Sugar Refining Company, Limited, to said profits had been filed, or that such profits were a total loss under the insurance effected by them, as appears by the letter of said Insurance Company of North America, a copy of which is hereto annexed, marked "L," and for the reasons aforesaid,
73 that said Canada Sugar Refining Company, Limited, claims interest upon the said amount of $15,000 from the 11th day of January, 1894.

W. W. WATSON.

Sworn to before me this 20th day of August, 1894.

[SEAL.] WILLIAM McLENNAN, *N. P.*

"A."

Shipped, in good order and well conditioned, by Ker & Co. in and upon the good Brit. ship called the *John E. Sayre*, whereof is master for this present voyage, Rouse, and now lying at anchor in the port of Iloilo and bound for Montreal.

I.	3,850 mats.	Forty-three thousand five hundred mats Iloilo
II.	3,900 "	superior sugar wg. nett 22,617.08 pcls.
III.	35,750 "	
	43,500 mats.	

being marked and numbered as in the margin; and are to be delivered in the like good order and well conditioned (all dangers and accidents of the seas excepted) at the aforesaid port of Montreal unto the Bank of Montreal or to their assigns, he or they paying freight for the said goods at the rate of ($7¼) seven and a quarter dollars U. S. gold coin per ton of 20 cwts. nett weight delivered in full.

In witness whereof, the master or purser of the said vessel has affirmed to four bills of lading all of this tenor and date, one of which being accomplished, the others to stand void.

Dated in Iloilo 21st January, 1893.

Weight & contents unknown.

All other conditions as per charter-party.

A. T. ROUSE, *Master.*

74 "B."

Shipped, in good order and well conditioned, by Ker & Co. in and upon the good Brit. ship called the *John E. Sayre*, whereof is master for this present voyage, Rouse, and now lying at anchor in the port of Iloilo and bound for Montreal.

A	1,681 mats.	Thirteen thousand six hundred and twenty-four
B	3,374 "	mats Iloilo superior sugar wg. nett 8,000 piculs.
C	8,569 "	
	13,624 mats	

being marked and numbered as in the margin; and are to be delivered in the like good order and well conditioned (all dangers and accidents of the seas excepted) at the aforesaid port of Montreal unto the Bank of Montreal or to their assigns, he or they paying freight for the said goods at the rate of ($7\frac{1}{4}$) seven and a quarter dollars U. S. gold coin per ton of 20 cwts. nett weight delivered in full.

In witness whereof, the master or purser of the said vessel has affirmed to four bills of lading all of this tenor and date, one of which being accomplished, the others to stand void.

Dated in Iloilo 1st February, 1893.

Weight and contents unknown.

All other conditions as per charter-party.

A. T. ROUSE.

75 "C."

Shipped, in good order and well conditioned, by Ker & Co. in and upon the good Brit. ship called the *John E. Sayre* whereof is master for this present voyage, Rouse, and now lying at anchor in the port of Iloilo and bound for Montreal,

I.	4,030 mats.	Fifteen thousand nine hundred and sixty-five
II.	10,340 "	mats Iloilo superior sugar wg. nett 8,742.92
III.	1,595 "	piculs.
	15,965 mats	

being marked and numbered as in the margin; and are to be delivered in the like good order and well conditioned (all dangers and accidents of the sea excepted) at the aforesaid port of Montreal unto the Bank of Montreal or to their assigns, he or they paying freight for the said goods at the rate of ($7\frac{1}{4}$) seven and a quarter dollars U. S. gold coin per ton of 20 cwts. nett weight delivered in full.

In witness whereof, the master or purser of the said vessel has affirmed to four bills of lading all of this tenor and date, one of which being accomplished, the others to stand void.

Dated in Iloilo 8th February, 1893.

Weight & contents unknown.

All other conditions as per charter-party.

A. T. ROUSE.

76 "D."

British ship *John E. Sayre*, Rouse,
Montreal.

The concerned,

Messrs. The Canada Sugar Refining Co., Ltd.
Messrs. The Bank of Montreal.

Iloilo superior sugar.

I	3,850 mats, wg. net	1,841.73 piculs.
II	3,900 " " "	2,015.43 "
III	35,750 " " "	18,759.92 "
	43,500 mats, wg. net.....	22,617.08 piculs.

Or 1,413^{5675} tons at £10.10/ per ton cost & freight	£14,842	9	2
Less freight at $7 1/4 p'r ton=$10,248.36 U. S. *gold coin* at exchange of $4.85 p'r £.....	2,113	1	3
	£12,729	7	11

E. & O. E.
Manila, 26th January, 1893.

77 "E."

British ship *John E. Sayre*, Rouse,
Montreal.

The concerned,

Messrs. The Canada Sugar Refining Co., Ltd.
Messrs. The Bank of Montreal.

Iloilo superior sugar.

A	1,681 mats, wg. net.....	1,000 piculs.
B	3,374 " " "	2,000 "
C	8,569 " " "	5,000 "
	13,624 mats, wg. net.....	8,000 piculs.

Or 500 tons at £10:10/ p'r ton cost and freight	£5,250		
Less freight at $7 1/4 per ton = $3,625 at exchange of $4.85 per £.....	747	8	5
	£4,502	11	7

E. & O. E.
Manila, 4th February, 1893.

KER & CO.
JAMES M. BEATTIE.

78 "F."

Copy.

Invoice of produce shipped by Ker & Co. on board the British ship *John E. Sayre*, Rouse, master, bound for Montreal, for account and risk of the concerned, by order of Messrs. The Canada Sugar Ref'g Co., Ltd., and consigned to Messrs. The Bank of Montreal.

Iloilo superior sugar.

I.	4,030 mats, wg. net.....	2,078.27 piculs.	
II.	10,340 " " "	5,824.47 "	
III.	1,595 " " "	840.08 "	
	15,965 mats, wg. net..	8,742.92 piculs.	
Or 546[4325] tons at £10.10/ p. ton cost of freight...		£5,737 10 10	
Less freight at $7 1/4 p. ton=$3,961.64 at exchange of $4.85 p. £.....		816 16 8	
		£4,920 14 2	

E. & O. E.
Manila, 11th February, 1893.

KER & CO.
JAMES M. BEATTIE.

79 "G."

Marks and numbers.

Insurance Company of North America.

$15,000. Philadelphia. No. 39600.

This — to certify, that on the 29th day of April, 1893, this company insured under policy No. 117,407 made for Robert Hampson fifteen thousand and $\frac{00}{100}$ dollars on profits on cargo sugar against total loss only valued at sum insured shipped on board of the Br. ship *John E. Sayre* at and from Iloilo to Montreal and the loss if any, subject to the terms and conditions of the policy, has been made payable to the order of Canada Sugar Ref'g Co., Ltd., on surrender of this certificate.

WM. A. PLATT,
2nd Vice-Pres't.
GRENTLER FRYER, *Secretary.*

Not valid unless countersigned by the company's duly authorized agent at Montreal.
Countersigned at Montreal this 29th day of April, 1893.
ROBERT HAMPSON, *Agent.*

$
at per cent.
Premium
$

Incorporated 1794.

80 "H."

By this public instrument of declaration be it known and made manifest that on this thirteenth day of July in the year of our Lord one thousand eight hundred and ninety-three, before me, Robert T. Squarey, one of Her Majesty's stipendiary justices of the peace, in and for the colony of Newfoundland, a commissioner of the supreme court of Newfoundland and a notary public for the island of Newfoundland, duly authorized and sworn and residing and practising at Channel in the said colony. Personally came and appeared Alfonso T. Rouse, the master and commander of the ship or vessel called the *John E. Sayre*, of the burthen of fifteen hundred and forty-eight tons or thereabouts per register, belonging to the port of Saint John, New Brunswick, in the Dominion of Canada, Edward G. Rouse, chief mate, John McGrath, boatswain, and Alfred Stewart, carpenter, on board of the said vessel, who in pursuance and extension of a protest duly noted with and entered by me, the said notary, on the seventh day of July instant and being duly sworn upon the Holy Evangelists of Almighty God, did by these presents unanimously affirm, testify and say, that on the tenth day of February last past, the said vessel being tight, strong and staunch, well manned, equipped, provided with all things necessary and essential for a vessel of her burthen on her intended voyage and being loaded with a cargo of two thousand four hundred and sixty-two tons of sugar, they, the said appearers, set sail in and with the said vessel from and out of the port of Iloilo in the Philippine islands, bound to the port of Montreal in the Dominion of Canada. That they encountered very severe weather and very heavy gales during the voyage. That on the fourth July instant with ship and ship's company in excellent condition, and while in latitude forty-five degrees and nine minutes north, and longitude fifty-seven degrees
81 and ten minutes west they encountered moderate weather with thick fog. That at 6 o'clock p. m. of the 5th July, with moderate breeze from E. S. E. and ship's course N. by W., was running along with mainsail and cross-jack hauled up and spanker furled, the hands constantly on the lookout and blowing fog-horn and the captain and officer of the watch on the poop, also on the lookout. That at 9 p. m. the same day the captain thought he heard the noise of surf, but as the night was so dark and thick, was not sure. They put the ship's head to the southward at once and sounded, but got no bottom with sixty-one fathoms. At 30 minutes after midnight ship's head still to the southward and going about four miles per hour. At 3 a. m. with very little breeze ship still heading south. At 8 a. m. head ship to the north. Captain and officer of the watch on the poop. That on 6th July commenced with thick fog and light breeze from S. E. ship's head still to the north and the ship lying with maintopsail aback all hands on the lookout and fog-horn constantly going. At 4 a. m. it was dead calm and very foggy and they could hear very distant sound of surf. 8 a. m. wore ship to the north and set the mainsail. At 8.30 a. m. the sun came out, but fog continued thick on the horizon.

At 10 a. m. made breakers on both sides and ahead. Let go all lee braces and hauled all the sails aback, and while the ship was going stern first about two knots an hour they struck on a rock stern first. That they hauled all the yards around again and tried to surge the ship's head, but she did not move. Sounded all around the ship and found four fathoms of water from mizen chains on port side along forward around the bow and aft on starboard side to mizzen chains. They got stream anchor out and carried it off ahead with a six-inch line fast sounding all the way and keeping in five and six fathoms of water, ran the length of the line and let go the anchor. At noon of the 6th, unshackled the starboard chain off bower anchor hauled it aboard and took it off the windlass, took end of
82 stream anchor line in through the starboard hawse pipe around the windlass and hove it tight. Then clewed up all sail, the carpenter employed watching the pumps and at that time he reported four inches of water in well, manned the windlass and hove on the line until it became impossible to get more. All hands then manned the pumps, the tide was then falling. That the vessel seemed to be afloat from mizzen chains forward. That a great many boats from the shore came alongside when these appearers then ascertained that their ship was stranded on the coast of Newfoundland about 11 miles east of Cape Ray and about one mile east of the entrance to Port-au-Basque harbor. That the said master employed forty men, broke open after hatch and commenced passing up cargo and piling it on the deck forward. That the said master then sent on shore for boats or schooners to discharge cargo into. They kept the pumps constantly going and the water was not gaining in the well. The carpenter had strict orders to watch the well and report any change to the said master. That at 8 p. m. the carpenter reported water increasing and an extra number of hands were ordered to the pumps and others employed throwing cargo overboard, the tide then being about low water and ship commencing to pound heavily. The said master engaged a pilot. At about midnight, hove the bow line as tight as possible. Carpenter reporting that the water in the well was increasing very fast. All hands employed at the pumps. After midnight of the sixth and early hours of the seventh hoisted out the boats and the port watch was ordered into them with the mate, for safety the master remaining on board with remainder of the crew, pumps still going. At 5 a. m. of the 7th more fishermen and a number of small boats came alongside and were employed boating cargo on shore. At 7 a. m. five schooners anchored ahead and master called a survey and on their recommendation commenced discharging cargo out of three hatches and conveying it to schooners in boats and continued so em-
83 ployed throughout the day. Saturday 8th it blew a strong breeze from S. E. with heavy undertow and the ship was half full of water, people were employed discharging cargo; at 4 p. m. ship was striking heavily and ship's crew, with other assistance, were employed in slipping and saving all running gear and sails until dark when as ship was striking heavily it was deemed advisable as a matter of safety for those employed to go on shore which

they did leaving ship in charge of a police officer and boat's crew; 9th there was no work on the ship, no inducement would get the people to work, ship was therefore left as before, in charge of police officer and boat's crew.

10th. The sugar that was still dry was landed and as all ship's materials was sent on shore the vessel was left to the charge of a police officer and boat's crew to await final instructions.

Wherefore the said appearers have protested and by these presents do solemnly protest —all and every person and persons whom it doth shall or may in any manner concern for all losses, prejudices and interests, costs, charges, damages and expenses already suffered and sustained or that shall or may be hereafter suffered and sustained by the owners of the said vessel or cargo or others interested in the said vessel or cargo for by reason or on account of the premises aforesaid and which losses, costs, charges, damages and expenses shall or may be recoverable from and against underwriters and others concerned in time and place convenient and as of right appertains such losses and damages having happened and occurred as aforementioned and not having been occasioned by or through the neglect of any of the said vessel's company who and every of whom did their utmost for the preservation of the said vessel.

Thus declared and protested at Channel in my office.

In witness whereof the said appearers have hereunto set their hands and I, the said Robert T. Squarey hereunto subscribing my hand and affixing my seal and Richard H. Parsons and
84 George E. Dicks, both of Channel, aforesaid gentlemen hereunto also subscribing in testimony of the premises.

(S'd) ALPHONSO G. ROUSE.
" EDWARD G. ROUSE.
" JOHN McGRATH.
" ALFRED STEWART.

(S'd) RICHARD PARSONS,
" GEORGE E. DICKS,
Witnesses.

In testimonium veritatis.
[SEAL.]

R. T. SQUAREY,
Her Majesty's Notary.

PROVINCE OF NEW BRUNSWICK, } ss:
City and County of Saint John, }

I, George E. Thomas, notary public in and for the city and county of Saint John, province of New Brunswick, Canada, duly commissioned and sworn, and residing therein, do certify the foregoing to be a correct copy of the original protest in the case of the late ship *John E. Sayre.*

In testimony whereof I have hereunto set my hand and affixed my notarial seal at the city of Saint John aforesaid this second day of September, A. D. 1893.

[SEAL] G. E. THOMAS, *Not. Pub.*

"I."

NEW YORK, *January 9th*, 1894.

The *John E. Sayre.*

Insurance Company of North America.

DEAR SIRS: We are acting for the Canada Sugar Refining Company in the matter of the insurance made by your company for them in the amount of $15,000 upon profits on a cargo of sugar shipped on the *John E. Sayre* at Iloilo for Montreal. The insurance was made in Montreal April 29th, 1893, by certificate
85 No. 39600 issued under policy No. 117,407, made for Robert Hampson. The certificate was countersigned by Robert Hampson, who we understand is your agent in Montreal. By the terms of the insurance the profits were insured against total loss only, and they were valued at the sum insured, to wit: $15,000. The original shipment consisted of about 73,089 mats, or about 2,460 tons, worth as per invoice about £22,000. It was first insured in the Atlantic Mutual Insurance Company December 9th, 1892, on the basis of $6.50 to the pound sterling. This valuation was increased in March and again in April, when the insurance was completed on the 29th at $166,145. On that same day your insurance on the profits was made, the value of the cargo then being about $181,000.

In prosecuting her voyage the *John E. Sayre* went ashore on the coast of Newfoundland July 6th, and became a total loss.

Some of the sugar was taken off by persons acting under the authority of the master and of the Atlantic Mutual Insurance Company, and was subsequently delivered at Montreal, the Atlantic Mutual Insurance Company paying the salvage expenses. The amount so delivered was about 9,900 mats weighing net about 325 tons and worth about £4,000.

The refining company claim a total loss.

We shall be glad to furnish any further information that you may require, or to take the matter up with your New York office for investigation.

Very truly, BUTLER, STILLMAN & HUBBARD.

86 "J."

Founded 1792.

INSURANCE COMPANY OF NORTH AMERICA,
232 WALNUT STREET, PHILADELPHIA, *Jan. 10th*, 1894.

Cable address: Platt, Philadelphia.
All letters and telegrams should be addressed to the company.

Messrs. Butler, Stillman & Hubbard, New York city.

DEAR SIRS: Your letter of the 9th instant is received.

We will be glad if you will confer with Mr. Catlin in New York,

as to the question of liability under our insurance on profits on sugar per ship *John E. Sayre*, from Iloilo to Montreal.

Yours truly,

WM. A. PLATT.
B.

"K."

Clifford A. Hand,
Frederick A. Pell,

George B. Bonney,
Townsend Jones.

Law offices: No. 51 Wall street.

NEW YORK, *August* 16*th*, 1894.

Re the "JOHN E. SAYRE."

GENT.: Touching the claim of the Montreal Sugar Refining Compand against the Insurance Company of North America for the alleged loss of profits upon cargo of sugar, please allow us to
87 state that we have been requested by the latter company to inform you "that after careful consideration they have decided to decline paying the claim."

We remain very respectfully yours,

HAND, BONNEY, PELL & JONES.

To Butler, Stillman & Hubbard, 54 Wall St., New York.

"L."

Founded 1792.

INSURANCE COMPANY OF NORTH AMERICA,
232 WALNUT STREET, PHILADELPHIA, *August* 15, 1894.

Cable address: Platt, Philadelphia.
All letters and telegrams should be addressed to the company.

Messrs. Butler, Stillman & Hubbard, New York, N. Y.

DEAR SIRS: Your letter of the 14th instant is received, and contents have our attention.

"*John E. Sayre.*"

We do not recognize that any sufficient proofs of loss referring to our interest of profits, have been presented to us. So far as the papers are concerned, we are satisfied with the bill of lading, invoices, the copy of the insurance certificate, copy of the protest and the account of the receipts.

No paper of any description has been shown, which would prove the refining company's interest, so far as regards profit, nor
88 has anything been shown which would prove to us, that these profits were a total loss under the insurance effected with us.

Yours truly,

WM. A. PLATT,
B.

EXHIBIT 11.

Copy.

No. 117,407. Gold. No. 2 cargo.

By the president and directors of the Insurance Co. of North America.

This policy of insurance witnesseth, that the president and directors of the Insurance Company of North America, by these presents, do cause Robert Hampson, to be insured in the sum of — lost or not lost, at and from ports and places to ports and places.

It is understood that the assured is to have power to issue certificates for any risk or risks under this policy, making the loss payable either at the office of the company at Philadelphia or at the counting-house of Messrs. Brown, Shipley & Co., London, to the holder thereof, on approval of the several risks by the company.

For account of whom it may concern. Loss, if any, payable to the parties in whose favor the certificates are drawn.

Upon merchandise. Exchange valued at 111½ gold on board of the vessel or vessels and conveyances in connection therewith whereof is master for this present voyage —— —— or whosoever else shall be master of said vessel, or by whatever other name or names the said vessel or masters thereof shall be named or called:

Beginning the adventure upon the said vessel as aforesaid;
89 and upon the freight or property, from and immediately following the loading of said property on board said vessel, and to continue during the voyage aforesaid on the vessel, until she shall be arrived and moored at anchor twenty-four hours in safety, and on the freight and property, until the property shall be safely landed.

And it shall be lawful for the said vessel, in her voyage, to proceed and sail to, touch and stay at, any ports or places, if thereunto obliged by stress of weather or other unavoidable accidents, without prejudice to this insurance. And in case of any loss or misfortune resulting from any peril insured against, the party insured engages for himself, or themselves, his or their factors, servants and assigns to sue, labor, travel for and use all reasonable and proper means for the security, preservation, relief, and recovery, of the property insured, or any part thereof; to the charges whereof, the said company engages to contribute in proportion as the sum insured bears to the whole sum at risk; and the acts of the insured or assurers, or of their joint or respective agents, in preserving, securing, or saving the property insured in case of danger or disaster, shall not be considered or held to be a waiver or acceptance of abandonment. The company having been paid the consideration for this insurance by the assured, or his or their assigns, at the rate of — per cent., the premiums on risk to be fixed at the time of endorsement; and such clauses to apply as the company may insert as the risks are successively reported.

Touching the adventures and perils which the said insurance company are contented to bear and take upon them; they are, of the seas, fires, pirates, rovers, assailing thieves, jettisons, and also barratry of the master and mariners unless the assured be owner or part owner of the vessel (embezzlement and illicit trade excepted in all cases), and such other perils, losses, or misfortunes that have or shall come to the hurt, detriment, or damage of the said
90 vessel, freight, or property, or any part thereof, as may be assumed by this policy and expressed therein. Provided, and it is expressly agreed, that the insurers shall not be liable for damage or injury to goods by dampness, change of flavor, or by being spotted, discolored, musty, or mouldy, unless the same be caused by actual contact of sea water with the articles so damaged. And in case of partial loss by sea damage to dry goods, cutlery or other hardware, the loss shall be ascertained by a separation of the damaged from the undamaged portion of a damaged package or packages respectively and the sale of the damaged portion or portions only and not otherwise; and the same practice shall obtain as to all other merchandise, so far as practicable. And provided, also, that the said company shall not be liable for any claim for, or loss by, seizure, capture or detention, or the consequences of any attempt thereat.

It is also agreed, that bar, bundle, rod, hoop and sheet iron; wire of all kinds, tin plates, steel, madder, sumac, wickerware, willow, manufactured or otherwise, cheese, salt, grain of all kinds, seeds of all kinds, fruits whether preserved or otherwise, dry fish, vegetables and roots, prepared or otherwise, rags, hempen yarn, bags, cotton bagging and other articles used for cotton bagging, pleasure carriages, household furniture, musical instruments, looking-glasses, skins and hides, and all articles perishable in their own nature, are warranted by the assured free from average (except general), unless it happen by stranding, and amount to twenty per cent. on the whole aggregate value of such articles; hemp, leaf tobacco, tobacco stems, bread, Indian meal, matting and cassia (except in boxes), free from average (unless general), under fifteen per cent. on the whole aggregate value of such articles; coffee in bags or bulk, pepper in bags or bulk, rice, sugar, flax and saltpetre, free from average (unless general) under seven per cent. on the whole aggregate value of such articles.

91 And in case of loss, such loss to be paid in sixty days after proof of loss, proof of interest, and adjustment exhibited to the assurers; the amount of the premium, or the note given for the premium, if unpaid, and all sums due to the company from the assured, when such loss becomes due, being first deducted, and all sums coming due being first paid or secured to the satisfaction of the assurers. But no loss or average shall in any case be paid under five per cent. on each passage, unless general.

Provided always, and it is further agreed, that if the said assured shall have made any other assurance upon the premises aforesaid, prior in date to this policy, then this insurance company shall be answerable only for so much of the amount as such prior insurance

may be deficient towards fully covering the premises hereby insured, without any deduction for the insolvency of all or any of the underwriters, and shall return the premium upon so much of the sum by them insured as they shall be by such prior insurance exonerated from. And in case of any insurance upon the said premises subsequent in date to the policy, this insurance company shall nevertheless be answerable for the full extent of the sum by them subscribed thereto, without right to claim contribution from such subsequent assurers, and shall accordingly be entitled to retain the premium by them received, in the same manner as if no subsequent assurance had been made.

It is also agreed that the vessel, freight or property be warranted by the assured free from any charge, damage or loss, which may arise in consequence of seizure or detention, for or on account of any illicit or prohibited trade, or any trade in articles contraband of war; and also free from any charge, damage, loss or claim on account of injury to any other vessel or her cargo, arising from collision of the vessel herein named with such other vessel.

It is further agreed that in case a total loss shall be claimed for or on account of any damage or charge to the said vessel, the only basis for ascertaining her value shall be her valuation in this policy, and if not valued herein, then her actual value at the port to which she belonged at the time of the inception of this risk. And it is also agreed that if the above-named vessel, upon a regular survey, shall be declared unseaworthy by reason of her being unsound or rotten, or incapable of prosecuting her voyage on account of her being unsound or rotten, then the assurers shall not be responsible on this policy. And if the voyage aforesaid shall have been begun, and shall have terminated before the date of this policy, then there shall be no return of premium on account of such termination of the voyage.

92

And it is further agreed, that one-third shall be deducted from the cost of all repairs or injuries and losses on the vessel by perils insured against (except on anchors and copper) as a commutation for the average difference between new and old, the remains of all articles replaced being considered as salvage and accordingly deducted from the nett loss. And instead of deducting one-third from the cost of recoppering, there shall be deducted two and a half per cent. of the nett cost of recoppering, after deducting the value of the old copper and nails, for each and every month the copper shall have been on the vessel at the time when it is taken off, and if the copper shall have been on forty months or more, the cost of recoppering shall be wholly excluded.

It is also agreed, that when the goods insured arrive at this port, no claim for loss of damage shall be allowed, unless the insured, or consignee, give notice to this company of the same, within ten days after the landing, and also of any public sale intended to be made in consequence of such loss or damage, at least two days previous to such sale, and that the company are not liable for loss or damage by breakage, leakage, wet or exposure on goods insured as on deck.

It is also agreed, that no liability is incurred under this policy for leakage on molasses or other liquids unless occasioned by stranding or collision with another vessel.

93 It is further agreed, that the insured shall not abandon in consequence of the port of destination being blockaded, but the vessel shall in such case have the liberty to proceed to another port not blockaded, which shall be substituted for the blockaded port.

It is also agreed, that in all cases of return premium for short property or over insurance, ten per cent. of the return premium shall be retained by the insurers.

It is also agreed, that no assignment of this policy shall be valid, unless the premium has been paid or the note given therefor is further secured by a previous endorsement of the person or persons for whose benefit said assignment is intended, and unless the consent of the insurers be first obtained.

The following clauses are printed in red in margin*al* of policy:

It is understood and agreed that this policy shall not be deemed as continued in force for more than one year from the date hereof unless otherwise agreed upon, and endorsed hereon.

It is expressly understood and agreed that the company shall not be liable for any claim for loss by capture, seizure, detention or destruction, or the consequences of any attempt thereat by or arising from the acts of any belligerent nation or people, notwithstanding anything to the contrary in this policy.

Proof of loss to be authenticated by the agent of the company, if there be one, at the place where such proofs are taken.

In witness whereof, the president and directors of the Insurance Company of North America have caused their common seals to be affixed to these presents in Philadelphia, the twenty-sixth day of August, one thousand eight hundred and seventy-three.

(S'g'd) CHARLES PLATT,
Vice-President.

94 Ex. A. Oct. 15/95.

Shipped, in good order and well conditioned, by Ker & Co. in and upon the good Brit. ship called the *John E. Syre*, whereof is master for this present voyage, Rouse, and now lying at anchor in the port of Iloilo and bound for Montreal.

I	3,850	mats.	Forty-three thousand five hundred mats Iloilo
II	3,900	"	superior sugar wg. nett 22,617.08 pcls.
III	35,750	"	
	43,000	mats.	

being marked and numbered as in the margin; and are to be delivered in the like good order and well conditioned (all dangers and accidents of the seas excepted) at the aforesaid port of Montreal unto the Bank of Montreal or to their assigns, he or they paying freight

for the said goods at the rate of ($7¼) seven & a quarter dollars U. S. gold coin per ton of 20 cwts. nett weight delivered in full.

In witness whereof, the master or purser of the said vessel has affirmed to four bills of lading all of this tenor and date, one of which being accomplished, the others to stand void.

Dated in Iloilo 21st January, 1893.

Weight and contents unknown.

All other conditions as per charter-party.

A. T. ROUSE, *Master.*

95 Ex. B. Oct. 15/95.

Shipped, in good order and well conditioned, by Ker & Co. in and upon the good Brit. ship called the *John E. Sayre*, whereof is master for this present voyage, Rouse, and now lying at anchor in the port of Iloilo and bound for Montreal

A	1,681 mats.	Thirteen thousand six hundred and twenty-four
B	3,374 "	mats Iloilo superior sugar wg. nett 8,000 piculs.
C	8,569	
	13,624 mats	

being marked and numbered as in the margin; and are to be delivered in the like good order and well conditioned (all dangers and accidents of the seas excepted) at the aforesaid port of Montreal unto the Bank of Montreal or to their assigns, he or they paying freight for the said goods at the rate of ($7¼) seven & a quarter dollars U. S. gold coin per ton of 20 cwts. nett weight delivered in full.

In witness whereof, the master or purser of the said vessel has affirmed to four bills of lading all of this tenor and date, one of which being accomplished, the others to stand void.

Dated at Iloilo 1st February, 1893.

Weight & contents unknown.

All other conditions as per charter-party.

A. T. ROUSE.

96 Ex. C. Oct. 15/95.

Shipped, in good order and well conditioned, by Ker & Co. in and upon the good Brit. ship called the *John E. Sayre* whereof is master for this present voyage, Rouse, and now lying at anchor in the port of Iloilo and bound for Montreal

I	4,030 mats.	Fifteen thousand nine hundred and sixty-five
II	10,340 "	mats Iloilo superior sugar wg. nett 8,742.92
III	1,595	piculs.
	15,965 mats	

being marked and numbered as in the margin; and are to be delivered in the like good order and well conditioned (all dangers and accidents of the seas excepted) at the aforesaid port of Montreal unto

the Bank of Montreal or to their assigns, he or they paying freight for the said goods at the rate of ($7¼) seven & a quarter dollars U. S. gold coin per ton of 20 cwts. nett weight delivered in full.

In witness whereof, the master or purser of the said vessel has affirmed to four bills of lading all of this tenor and date, one of which being accomplished, the others to stand void.

Dated in Iloilo 8th February, 1893.

Weight & contents unknown.

All other conditions as per charter-party.

A. T. ROUSE.

97 (A. W. H. 1.)

The Anglo-American Cable Company.

(Blank.)

Place from, New York. No. words, 12. Jul- 7, 1893.

To Harvey & Co.:

Can assistance be sent to *John E. Sayre* ashore at Channel?

A. A. RAVEN,
2nd V. Pres't.

(A. W. H. 2.)

Copy of Telegram Sent by Harvey & Co., St. Johns, N. F., to the Atlantic Mutual Insurance Company, New York.

JULY 8TH, 1893.

Our correspondent Channel reports *Sayre* filled water to second deck. Nearly all cargo on second deck salved by boats. Cargo lower hold spoiled. Little chance getting vessel off. *Grand Lake* momentarily expected. Are you interested hull?

(A. W. H. 3.)

The Anglo-American Telegraph Company.

(Blank.)

Place from, New York. No. words, 17. Jul- 8, 1893.

To Harvey & Co.:

Have saved cargo protected arrange for salvage and forward to destination have no interest in hull.

A. A. RAVEN,
2nd V. Pres't.

98 (A. W. H. 4.)

Copy of Telegram Sent by Harvey & Co., St. Johns, N. F., to the Atlantic Mutual Insurance Company, New York.

JULY 8TH, 1893.

Grand Lake confirms previous report. Have appointed competent agent protect cargo. Captain of *Sayre* arranged give salvors half. Do you desire to purchase salvors' half? If so give limits.

(A. W. H. 5.)

The Anglo-American Telegraph Company.

(Blank.)

Place from, New York. No. words, 25. Jul- 10, 1893.

To Harvey & Co.:

Are unable to determine value at present arrange with salvors to take sugar at ascertained value when delivered at Montreal giving security if necessary.

A. A. RAVEN,
2nd V. President.

(A. W. H. 6.)

Copy of Telegram Sent by Harvey & Co., St. Johns, N. F., to the Atlantic Mutual Insurance Company, New York.

JULY 12TH, 1893.

Salvors offer sell two half cents pound bond. Possibly take quarter cent less. Shall we buy for your account. Salvors unlikely let their share go without fixing price. Reply promptly.

99 (A. W. H. 7.)

The Anglo-American Telegraph Company.

(Blank.)

Place from, New York. No. words, 21. Jul- 12, 1893.

To Harvey & Co.:

On sound sugar authorize you to pay two and one-fourth cents pound if not acceptable forward our portion only.

A. A. RAVEN,
2nd V. Pres't.

(A. W. H. 8.)

The Anglo-American Telegraph Company.

(Blank.)

Place from, New York. No. words, 31. Jul- 13, 1893.

To Harvey & Co., St. John's:

Master *Sayre* telegraphs that tramp steamer offers to take sugar to Montreal one fifty ton he can settle salvage cent pound and asks for instructions have referred him to you.

A. A. RAVEN,
2nd V. Pres't.

(A. W. H. 9.)

Copy of Telegram Sent by Harvey & Co., St. Johns, N. F., to the Atlantic Mutual Insurance Company, New York.

JULY 26TH, 1893.

Captain *Sayre* refuses let our agent ship sugar until his bill of which he refuses items is paid. We offer pay any legal claim. Will you telegraph captain to deliver us all cargo immediately and give us bill with items which we will pay.

100 (A. W. H. 10.)

The Anglo-American Telegraph Company.

(Blank.)

Place from, New York. No. words, 8. Jul- 26, 1893.

Have requested owner *Sayre* to instruct captain.

A. A. RAVEN,
2nd V. Pres'd't.

(A. W. H. 11.)

Copy of Telegram Sent by Harvey & Co., St. Johns, N. F., to the Atlantic Mutual Insurance Company, New York.

JULY 31ST, 1893.

Are shipping about three hundred and fifty tons *Sayre's* sugar steamship *Tiber* your order Montreal. All insured by you, arrange for delivery Montreal.

(A. W. H. 12.)

The Anglo-American Telegraph Company.

(Blank.)

Place from, New York. No. words, 9. July 31, 1893.

To Harvey & Co.:

Consign sugar to Canada Sugar Refining Company Limited Montreal.

A. A. RAVEN, *2nd V. P.*

(A. W. H. 13.)

Copy of Telegram Sent by Harvey & Co., St. Johns, N. F., to the Atlantic Mutual Insurance Company, New York.

AUGUST 11TH, 1893.

There are some general average charges against proportion of freight payable *Sayre.*

101 (A. W. H. 14.)

The Anglo-American Telegraph Company.

(Blank.)

Place from, New York. No. words, 19. Aug. 11, 1893.

To Harvey & Co.:

No freight should be paid on sugar until delivery there being salvage against it same as on cargo.

A. A. RAVEN,
2d V. Pres't.

Brig "J. E. Sayre."

Name.	Sacks.	Gross weight. T.	Cwt.	Qrs.	Lbs.	Tare.	Nett weight. T.	Cwt.	Qrs.	Lbs.	Salvor's share. T.	Cwt.	Qrs.	Lbs.	Price per lb.	$ cts.	Weighing expenses.	Stor'ge.	Order No.	
Capt. Solomon Gillam.	1,451	47	9	3	24	1,451	46	17	0	1	23	8	7	00	2½c.	1,311 80	5 44	.....	4	
Capt. Adam Power....	2,098	67	17	0	11	2,098	66	18	1	13	23	17	0	7	2½c.	1,335 77	.....	.....	2 & 3	
Emmanuel Matthews.	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	6	0	3	13	1¾c.	236 89	.....	.....	22	
Edward Gillam	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	2	12	0	18	1¾c.	102 23	.....	.....	13	
William Hickman. ...	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	19	0	9	1¾c.	37 40	7 86	.....	5	
Capt. John Eastman...	1,099	37	6	3	5	1,099	36	16	3	26	18	8	1	27	2½c.	1,031 77	.....	.....	1	
Capt. Thos. Dicks.....	1,550	51	7	3	26	1,550	50	14	0	16	25	7	0	8	2½c.	1,414 20	.....	.....	6	
George Dicks.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	5 60	5 81	.....	28	
Aaron Forsey.....	1,236	43	14	2	19	1,236	43	3	2	15	21	11	3	7	2c.	.....	.....	.....	.....	
" "	116	3	15	1	25	116	3	14	1	21	1	17	0	24	½c.	984 71	.....	.....	7	Wet.
Michael Forsey..	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	3 39	5 07	.....	32	
Emmanuel Pike.....	222	8	4	0	5	222	8	2	0	7	4	1	0	3	2c.	181 50	.....	3 35	24	Stored at 3c. per sack.
John E. Horman.....	288	10	10	0	7	288	10	7	1	27	5	3	2	27	1¾c.	203 33	.....	.....	.....	
" "	52	1	9	2	22	52	1	9	0	26	....	14	2	15	½c.	8 18	1 27	.....	29	Wet.
" "	221	8	0	3	20	221	7	18	3	23	3	19	1	25	2½c.	222 52	82	.....	30	
Capt. Wm. Carter.....	704	27	1	1	19	704	26	15	0	15	12	17	2	7	2½c.	721 17	.....	.....	.....	*
" "	74	2	14	3	9	74	2	14	0	19	1	7	0	9	1½c.	45 49	2 92	.....	27	
Alexander Lemoine...	104	3	14	0	24	104	3	13	1	4	1	6	0	20	1¾c.	51 31	.....	.....	14	
George L. Frew.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	10	1	24	2c.	23 44	.....	.....	16	
Alexander Lemoine...	219	6	18	3	9	219	6	16	3	14	2	8	3	15	1¾c.	95 81	.....	.....	14	
George L. Frew... ..	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	19	2	6	2c.	43 80	1 21	3 27	16	Stored at 3c. per sack.
James Newman.....	108	3	2	3	17	162	3	1	1	23	1	10	2	25	½c.	17 20	.....	.....	16	Wet.
	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	75 00	31	◇
	9,542	323	8	3	18	9,596	319	3	0	26	159	1	2	7	.....	$8,077 51	30 40	81 60	.....	

E. & O. E. St. Johns, August, 1893. HARVEY & CO.

*Salvor kept ½ ton, his portion (13 sacks).

◇ Storage, 50c. per ton, underwriters' lot.

Brig "J. E. Sayre."

Name.	Sacks.	Gross weight. T.	Cwt.	Qrs.	Lbs.	Tare.	Nett weight. T.	Cwt.	Qrs.	Lbs.	Price per lb.	$ cts.	Weigh-ng expenses.	Storage.	Order No.	
Charles Bennett	25		15	3	11	25		15	2	14	1c.	17 50			26	This sugar was all landed at one cent per pound salvage, became more or less damaged in boats.
Michael Gillam	25		15	3	11	25		15	2	14	"	17 50			25	
Emanuel Matthews	63	1	19	3	21	63	1	19	1	14	"	44 10			23	
John Hiscock	41	1	5	3	27	41	1	5	2	14	"	28 70			12	
William Currie	55	1	14	2	27	55	1	14	1	0	"	38 36			8	
Mark Childs	15		9	2	1	15		9	1	14	"	10 50			19	
William Stickland	26		16	1	26	26		16	1	0	"	18 20			21	
Isidore Saxey	35	1	2	0	21	35	1	1	3	14	"	24 50			17	
William Ford	27		17	0	13	27		16	3	14	"	18 90			15	
Austin Martin	65	2	1	1	11	65	2	0	3	2	"	45 66			11	
Joseph Morris	19		12	0	5	19		11	3	14	"	13 30			18	
William Vardy	50	1	11	2	9	50	1	11	0	15	"	34 87			10	
George Blackmore	25		15	3	11	25		15	2	14	"	17 50			20	
John Rodgers	24		15	0	24	24		15	0	0	"	16 80	1 17	14 85	9	
	495	15	13	2	22		15	9	1	13		$346 39	1 17	14 85		

E. & O. E.
St. Johns, Aug. 17th, 1893.

HARVEY & CO.

THE INSURANCE CO. OF NORTH AMERICA.

446 65

9—290

104 A. W. H. 16*a*.

The Atlantic Mutual Insurance Co. to Harvey & Co., Dr.

Brig "J. E. Sayre."

To paid salvors per our statement		No. 1.....	8,077 51
" " " "		No. 2.	346 39
" storage at Channel	"	No. 1.....	81 60
" " " "		No. 2.....	14 85
" weighing charges @ channel	"	No. 1.....	30 40
" " " "		No. 2.....	1 17
" for use of barrows and scales.....			20 00
" labor, &c., shipping sugar on S. S. *Tiber*			192 20
" Capt. Rouse on ac. of expenses.....			200 00
" Capt. Pike's board at Channel.....			20 00
" magistrate for attesting 5 bills at Channel.....			1 25
" for 200 empty sacks.....			40 00
" for sundry cables.....			41 60
To commission on estimated value of cargo received from brig *J. E. Sayre* custodied and reshipped by S. S. *Tiber*, $20,000.00 at 5 %			1,000 00
			$10,066 97

E. & O. E.
St. Johns, N. F., August 17th, 1893.

HARVEY & CO.

3 days' sight draft favor of Union bank for.....	$10,167.64
	$10,066.97
Add 1 % bank chg.....	100.67
	$10,167.64

(A. W. H. 17.)

Henry Dobell & Co.

Shipped, in good order and condition by Harvey & Co., of St. Johns, N. F., in and upon the S. S. *Tiber* or other steamer, whereof De Lisle is master for this present
105 voyage; and now lying in the port of Channel, and bound for Montreal, via Pieton, viz:

With liberty to call at any port or ports, and in such order as convenient to a ship, and to land the cargo, or any portion thereof, either going or returning, and to tow and assist vessels in all situations.

4,583 sacks dry sugar 153 tons 12 cwt. 0 qrs. 12 lbs — Four thousand five hundred and eighty-three sacks dry sugar weighing one hundred and fifty-three tons twelve hundredweight and twelve pounds shippers' account all on board to be delivered. Being marked and numbered as per margin; are to be delivered from ship's tackle in the like good order and well conditioned, at

the aforesaid port of Montreal (the act of God, the Queen's enemies, fire and all and every the dangers and accidents of the seas and navigation of whatsoever nature and kind excepted) unto Atlantic Mutual Insurance Co. of New York or to their assigns, he or they paying freight for said goods, at the rate of four dollars per ton of two thousand two hundred and forty pounds with average accustomed.

In witness whereof, the master or purser of said steamer hath affirmed to three bills of lading, all of this tenor and date; one of which being accomplished, the rest to stand void.

Dated at Channel this fourth day of August, 1893.

JOHN DELISLE,
For Master.

Weight and contents unknown. Leakage and breakage excepted.

(Endorsed:) Atlantic Mutual Insurance Co., by A. A. Raven, 2nd vice-pres.

106 (A. W. H. 18.)

Henry Dobell & Co.

Shipped, in good order and condition, by Harvey & Co. of St. Johns, N. F., in and upon the S. S. *Tiber* or other steamer whereof Delisle is master, for this present voyage; and now lying in the port of Channel, N. F., and bound for Montreal via Pieton, viz:

With liberty to call at port or ports, and in such order as convenient to the ship, and to land the cargo, or any portion thereof, either going or returning, and to tow and assist vessels in all situations.

4,596 sacks dry sugar 154 tons 2 cwt. 0 qrs. 13 lbs. 670 sacks wet sugar 20 tons 18 cwt. 2 qrs. 20 lbs.

Four thousand five hundred and ninety-six sacks dry sugar weighing one hundred and fifty-four tons two hundredweight and thirteen pounds *dry sugar* six hundred and seventy sacks wet sugar weighing twenty tons eighteen hundredweight two-quarters and seventy pounds shippers' account all on board to be delivered.

Being marked and numbered as per margin; are to be delivered from ship's tackles in the like good order and well conditioned, at the aforesaid port of Montreal (the act of God, the Queen's enemies, fire and all and

every the dangers and accidents of the seas and navigation of whatsoever nature and kind excepted) unto Atlantic Mutual Insurance Co. of New York or to their assigns, he or they paying freight for said goods at
107 the rate of four dollars per ton of two thousand two hundred and forty pounds with average accustomed.

In witness whereof, the master or purser of said steamer hath affirmed to three bills of lading all of this tenor and date; one of which being accomplished, the rest to stand void.

Dated at Channel, N. F., this fourth day of August, 1893.

JOHN DELISLE,
For Master.

Weight and contents unknown. Leakage and breakage excepted.

(Endorsed:) Atlantic Mutual Insurance Co., by A. A. Raven, 2nd vice-pres.

(A. W. H. 19.)

Henry Dobell & Co.

Shipped, in good order and condition, by Harvey & Co., of St. Johns, N F., in and upon the S. S. *Tiber* or other steamer, whereof De Lisle is master for this present voyage, and now lying in the port of Channel, and bound for Montreal via Pieton, viz:

With liberty to call at any port or ports, and in such order as convenient to the ship, and to land the cargo or any portion thereof, either going or returning, and to tow and assist vessels in all situations.

175 sacks wet sugar 5 tons 9 cwt. 1 qr. 23 lbs.

One hundred and seventy-five sacks wet sugar weighing five tons nine hundredweight one-quarter and twenty-three pounds. Shippers' account all on board to be delivered. Being marked and numbered as per margin; are to be delivered from ship's tackles in the like good order and well conditioned, at the aforesaid port of Montreal (the act of God, the Queen's enemies, fire
108 and all and every the dangers and accidents of the seas and navigation of whatsoever nature and kind excepted) unto Atlantic Mutual Insurance Co. of New York or to their assigns, he or they paying freight for said goods, at the rate of four dollars per ton of two thousand two hundred and forty pounds with average accustomed.

In witness whereof, the master or purser of said steamer hath affirmed to three bills of lading, all of this tenor

and date; one of which being accomplished, the rest to stand void.

Dated at Channel this fourth day of August, 1893.

JOHN DELISLE,
For Master.

Weight and contents unknown. Leakage and breakage excepted.

(Endorsed:) Atlantic Mutual Insurance Co., by A. A. Raven, 2nd vice-pres.

(R. G. P. 1.)

The Anglo-American Telegraph Company.

(Blank.)

Place from, St. Johns. No. words, 7. 12 Jul-, 1893.

To Capt. Pike, Channel:

Will telegraph limit to buy sugar today.

HARVEY & CO.

(*Telegram.*)

Place from, St. Johns. No. words, 38. 12 Jul-, 1893.

To Capt. Pike, Channel:

Buy all undamaged two cents damaged at such reduction you consider fair telegraph when you know about how much you
109 will have and we will send steamer for it buy any materials that you can make money on.

HARVEY & CO.

(*Telegram.*)

Place from, St. Johns. No. words, 22. 8 Jul-, 1893.

To Capt. Delaney, Channel:

Request purser remain protect underwriters' cargo get count of whole cargo telegraph us what number and approximate weight have some mats weighed.

HARVEY & CO.

(*Telegram.*)

Place from, St. Johns. No. words, 22. 10 Jul-, 1893.

To Capt. Pike, Channel:

Necessary to land all will have magistrate assist a little later on what is salvors' idea of price their half in bond.

HARVEY & CO.

(*Telegram.*)

Place from, ——. No. words, 10. 20 Jul-, 1893.

To Mr. Pike, purser S. S. *Grand Lake:*

Are arranging for freighting sugar please remain for the present.

HARVEY & CO.

1	2	3				4	5				6				7	8	9	10	11	12
		Gross weight.					Nett weight.				Salvor's share.									
Name.	No. sacks.	T.	Cwt.	Qrs.	Lbs.	Tare.	T.	Cwt.	Qrs.	Lbs.	T.	Cwt.	Qrs.	Lbs.	Price per lb.	$ cts.	Check No.	Weighing expenses.	Storage. $ cts.	
Capt. Solomon Gillam.	1,451	47	9	3	24	1,451	46	17	0	1	23	8	2	00	2½c.	1,311 80	4	5 44		
Capt. Adam Power....	2,098	67	17	0	11	2,098	66	18	1	13	23	17	0	7	2½c.	1,335 77	2 & 3			
Emanuel Matthews..	.....	...	...	...	...	.....	...	...	...	...	6	0	3	13	1¾c.	236 89	22			
Edward Gillam	.....	...	...	...	...	.....	...	...	...	...	2	12	0	18	1¾c.	102 23	13			
William Hickman.....	.....	...	...	...	...	.....	...	...	...	...	0	19	0	9	1¾c.	37 40	5	7 86		
Capt. John Eastman..	1,099	37	6	3	5	1,099	36	16	3	26	18	8	1	27	2½c.	1,031 77	1			
Capt. Thomas Dicks...	1,550	51	7	3	26	1,550	50	14	0	16	25	7	0	8	2½c.	1,414 20	6			
George Dicks	.....	...	...	...	...	.....	...	...	...	...	...	...	...	...	.....	5 60	28	5 81		
Aaron Forsey.....	1,236	43	14	2	19	1,236	43	3	2	15	21	11	3	7	2c.					
" "	116	3	15	1	25	116	3	14	1	21	1	7	0	24	½c.	984 71	7			
Michael Forsey.....	.....	...	...	...	...	.....	...	...	...	...	...	...	...	...	.....	3 39	32	5 07		
Emanuel Pike.....	222	8	4	0	5	222	8	2	0	7	4	1	0	3	2c.	181 42	24	.....	3 33	Three cents per sack.
John E. Harmon.....	288	10	10	0	7	288	10	7	1	27	5	3	2	27	1¾c.	203 33				
" "	52	1	9	2	22	52	1	9	0	26	0	14	2	13	½c.	8 18	29	1 27		
" "	221	8	0	3	20	221	7	18	3	23	3	19	1	25	2½c.	222 52	30	82		
Capt. William Corke..	704	27	1	1	19	704	26	15	0	15	12	17	2	7	2½c.	721 17	.....	2 92		
" " " ..	74	2	14	3	9	74	2	14	0	19	1	7	0	9	1½c.	45 49	27			
Alexander Le Moine..	104	3	14	0	24	104	3	13	1	4	1	6	0	20	1¾c.	51 31	14			
George Le Frene.....	.....	...	...	...	...	.....	...	...	...	...	0	10	1	24	2c.	23 44	16			
Alexander Le Moine..	219	6	18	3	9	219	6	16	3	14	2	8	3	15	1¾c.	95 81	14			
George Le Frene.....	.....	...	...	...	...	.....	...	...	...	...	0	19	2	6	2c.	43 80	16	1 21	3 27	Three cents per sack.
James Newman.....	108	3	2	3	17	162	3	1	1	23	1	10	2	25	½c.	17 20	31	.....	75 00	Fifty cents per ton for all underwriters' port.
																			20 00	For use barrows & scales.
																			192 20	Shipping on board *Tiber*.

R. G. PIKE.

111 R. G. P. 3.

1	2	3				4	5				6	7	8	9	10	11
		Gross weight.					Nett weight.									
Name.	No. sacks.	T.	Cwt.	Qrs.	Lbs.	Tare.	T.	Cwt.	Qrs.	Lbs.	Price per lb.	$ cts.	No.	Weighing.	Storage.	
Charles Bennett.....	25	0	15	3	11	25	0	15	2	14	1c.	17 50	26			This sugar was all landed at one cent per pound salvage and all became more or less damaged in boats.
Michael Gillam.....	25	0	15	3	11	25	0	15	2	14	1c.	17 50	25			
Emanuel Matthews...	63	1	19	3	21	63	1	19	1	14	1c.	44 10	23			
John Hiscock.....	41	1	5	3	27	41	1	5	2	14	1c.	28 70	12			
William Currie.....	55	1	14	2	27	55	1	14	1	00	1c.	38 36	8			
Mark Childs.....	15	0	9	2	1	15	0	9	1	14	1c.	10 50	19			
William Stickland....	26	0	16	1	26	26	0	16	1	00	1c.	18 20	21			
Isadore Saxey.....	35	1	2	0	21	35	1	1	3	14	1c.	24 40	17			
William Ford.....	27	0	17	0	13	27	0	16	3	14	1c.	18 90	15			
Austin Martin.....	65	2	1	1	15	65	2	0	3	2	1c.	45 66	11			
Joseph Morris.....	19	0	2	0	5	19	0	11	3	14	1c.	13 30	18			
William Vardy..... ...	50	1	11	2	9	50	1	11	0	15	1c.	34 87	10			
George Blackmore....	25	0	15	3	11	25	0	15	2	14	1c.	17 50	20			
John Rodgers.....	24	0	15	0	24	24	0	15	0	00	1c.	16 80	9	1 17	14 89	Three cents per sack.

R G. PIKE.

112 United States District Court, Southern District of New York.

THE CANADA SUGAR REFINING CO. vs. THE INSURANCE COMPANY OF N. America. } In Admiralty. Marine Insurance on Profits.

Butler, Notman, Joline & Mynderse, for lib.; Hand & Bonney, for resp'ts.

BROWN, *J.*:

On April 29, 1893, the respondent company insured for the libellant's benefit:

"$15,000 on profits on cargo sugar; against total loss only; valued at sum insured; shipped on board the British ship *John E. Sayre* at and from Iloilo to Montreal."

At that time the *Sayre* was at sea prosecuting the voyage. The libellant had 2,462 tons of sugars on board of her, amounting in value to $181,000, and had just completed insurance of the sugars to the amount of $166,145 in the Atlantic Mutual, of which insurance the respondent was informed before its insurance on profits was made. In July following the *Sayre* stranded on the coast of Newfoundland, and all the cargo was lost excepting about 300 tons which was saved by the aid of salvors, of which one-half went to them as their agreed compensation. The agreement was originally made by the master soon after the stranding; but a few days afterwards the agent of the Atlantic Mutual appeared to whom the master turned over the salvage operations. He confirmed the previous agreement with the salvors; reimbursed to the
113 master the expenses already incurred by him, and thenceforward, with the libellant's consent and the defendant's knowledge and acquiescence, took the complete control and disposition of the cargo. The agent eventually bought from the salvors the moieties of the sugars allotted to them under the agreement, and then shipped all the sugar saved to the order of the insurers, to Montreal. The value of all the sugar that reached Montreal was about $20,000, and the expenses and salvage charges paid by the Atlantic Mutual thereon, and the additional freight to Montreal exceeded $11,000, so that out of the whole cargo worth $181,000, less than $9,000, net was saved. The Atlantic Mutual settled with the libellant as for a constructive total loss, under its policy of $166,145, and it turned over the sugars saved in part settlement of that sum, on about the basis of the average *pro rata* policy valuation. The respondent contests its liability upon the policy on profits on the ground chiefly that the receipt by the libellant of a portion of the sugars, viz, about $20,000 in value, prevents the loss from being "total" within the terms of its policy.

The intention of both parties, I cannot doubt, was to insure under the designation of "profits" the interest of the libellant in this cargo over and above the sum of $166,145, for which the sugars were already insured in the Atlantic Mutual. The excess of the market

value over that sum was at that time equal to the insurance of profits. It was a valued policy; and the provision as to "total loss only," is the ordinary provision of those policies which admit abandonment when the loss exceeds one-half the value, and is not the special limitation to an "*actual* total loss," which requires the destruction of the entire property in order to entitle the assured to recover anything.

Upon the facts in proof, I cannot sustain the defense in any aspect of the case. The subject of this policy was "profits" alone. The facts show that by the stranding all "profits" were utterly destroyed, and very much more. There was clearly a total loss of the
114 subject insured, viz, profits. No notice of abandonment of profits was necessary, as all possibility of "profits" was manifestly gone, and no remnant of profits remained which could be abandoned to the defendant.

As respects the sugars themselves, moreover, there was a practical abandonment to the Atlantic Mutual, the insurers on cargo. On their policy there was a constructive total loss, since not one-tenth net value of their policy was saved. That company's rights as respects any abandonment were superior; and the defendant company could not legally have any abandonment to itself as insurer on profits, except on payment to the insurer of cargo of the whole amount of the latter's liability—in this case an absurd alternative. A policy on profits in a case like this precludes any possibility of an abandonment by the assured by his own act alone; and hence no attempt to abandon to the defendant was required.

Mumford *v.* Hallet., 1 Johns, 433, 439.
Tom *v.* Smith, 3 Caines, 245, 251.

The receipt of about one-eighth of this cargo by the libellant in the manner above described does not affect the libellant's right to recover as for a "total loss:" (1) because upon every pound of sugar rescued more than half its value had been paid in order to recover it, so that there was not only an actual total loss of "profits," but a constructive total loss of the sugar as well, and insurance on profits is subject to a constructive total loss (Abbot *v.* Secor, 3 Johns. Cases, 39, 46); (2) because none of the sugar ever came to the libellant in the ordinary course of the voyage, or through any delivery to the libellant as consignee by the carrier; but only through a delivery by the insurer of cargo, after a practical abandonment to the latter, and through a settlement by the insurer as upon a total loss, in which the sugar was received by the libellant upon an
115 equitable basis in part payment, and as the equivalent of its value in cash, as any other property might have been received.

Decree for the libellant with costs.

Dated June 3, '97.

At a stated term of the United States district court for the southern district of New York, held at the post-office building, in the city of New York, on the 15th day of June, 1897.

Present: Hon. Addison Brown, district judge.

CANADA SUGAR REFINING COMPANY, LIMITED, Libellant,
against
INSURANCE COMPANY OF NORTH AMERICA, Respondent.

This case having come regularly on to be heard, and having been submitted upon the pleadings, proceedings and proofs, and after hearing arguments of the proctors for the respective parties herein, and due deliberation having been had in the premises, now, upon motion of Butler, Stillman & Hubbard, proctors for libellant, it is—

Ordered, adjudged and decreed, that the libellant recover of the respondent the principal sum of fifteen thousand ($15,000) dollars, together with interest thereon from the 15th day of March, 1894, to the date of this decree in the further sum of two thousand nine hundred and twenty-five ($2,925) dollars, together with their costs as taxed in the further sum of one hundred and thirty-one and $\frac{45}{100}$ ($131.45) dollars, amounting in all to the total sum of eighteen thousand and fifty-six and $\frac{45}{100}$ ($18,056.45) dollars, and that they have judgment therefor. And it is further—

116

Ordered, adjudged and decreed, that unless an appeal be taken from this decree within the time and in the manner prescribed by law and by the rules and practice of this court, or this decree be sooner satisfied, execution issue against the said respondent.

ADDISON BROWN.

(Endorsed:) Decree. Filed June 15, 1897.

District Court of the United States for the Southern District of New York.

CANADA SUGAR REFINING COMPANY, LIMITED, Libellant,
against
INSURANCE COMPANY OF NORTH AMERICA, Respondent.

SIRS: Please take notice that The Insurance Company of North America, the respondent, hereby appeals to the United States circuit court of appeals for the second circuit from the final decree made and entered herein in favor of the said libellant, and against the said respondent, for the sum of eighteen thousand and fifty-six and 45/100 dollars bearing date the 15th day of June, eighteen hundred and ninety-seven, and from each and every part of such decree.

117

Dated New York, June 16th, 1897.

Yours, &c.,
HAND & BONNEY,
Proctors for Respondent.

To Butler, Stillman & Hubbard, Esqs., proctors for libellant.
" Samuel H. Lyman, Esq., clerk.

(Endorsed:) Notice of appeal. Filed June 16, 1897.

United States Circuit Court of Appeals for the Second Circuit.

CANADA SUGAR REFINING COMPANY, LIMITED, Libellant and Appellee,
vs.
INSURANCE COMPANY OF NORTH AMERICA, Respondent and Appellant.

The above-named respondent and appellant hereby assigns error in the decision and final decree of the district court of the United States for the southern district of New York in the above-entitled cause in the following particulars:

First. In that the said district court adjudged and decreed that the libellant should recover of the respondent the sum of eighteen thousand and fifty-six $\frac{45}{100}$ dollars or in any sum whatever.

118 Second. In that the said district court did not make a decree dismissing the libel with costs of the said court to the respondent.

Third. In that, in view of the circumstance that a substantial part of the cargo was saved and delivered to the libellant, the said district court did not dismiss the libel with costs to the respondent.

Fourth. In that said district court found and held that the receipt of a substantial part of the cargo by the libellant did not affect libellant's right to recover as for a total loss.

Fifth. In that said district court found and held that there was an actual total loss of profits to the libellant.

Sixth. In that said district court found and held that the insurance on profits was subject to a constructive total loss of the cargo.

Seventh. In that the said district court found and held that none of the sugar ever came to the libellant in the ordinary course of the voyage or through any delivery to the libellant as consignee by the carrier, but only through delivery by the insurer of cargo, and that as a consequence the receipt of about one-eighth of the cargo by the libellant did not affect the libellant's right to recover as for a total loss.

Eighth. In that the said district court failed or refused to find and decide that the only risk undertaken by the respondent under its agreement of insurance in this case was for fifteen thousand dollars on profits on cargo of sugar against total loss only valued at sum insured and was discharged by safe arrival at the port of destination of a substantial part of the said cargo.

Dated Aug. 23d, 1897.

HAND & BONNEY,
Proctors for Respondent, Appellant.

(Endorsed:) Assignment of errors. Filed September 29th, 1897.

119 UNITED STATES OF AMERICA, *Southern District of New York,* } ss:

THE CANADA SUGAR REFINING COMPANY, Libellant and Appellee,
vs.
THE INSURANCE COMPANY OF NORTH AMERICA, Respondent and Appellant.

I, Samuel H. Lyman, clerk of the district court of the United States of America for the southern district of New York, do hereby certify that the foregoing is a correct transcript of the record of the district court in the above-entitled cause made up pursuant to rule No. 4 in admiralty of the United States circuit court of appeals for the second circuit.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the south-
[SEAL.] ern district of New York, this 22d day of November, in the year of our Lord one thousand eight hundred and ninety-seven and of the Independence of the said United States the one hundred and twenty-second.

SAMUEL H. LYMAN, *Clerk.*

120 United States Circuit Court of Appeals, Second Circuit.

THE CANADA SUGAR REFINING COMPANY, LIMITED, Appellee,
vs.
THE INSURANCE COMPANY OF NORTH AMERICA, Appellant.

WALLACE, *Circuit Judge:*

The libel in this cause was filed to recover upon a contract of insurance with the libellant, evidenced by a certificate dated April 29, 1893, delivered by the appellant at Philadelphia, whereby the latter caused to be insured under its open policy, No. 117,407, against perils of the sea, "15,000 on profits on cargo of sugar against total loss only, valued at sum insured, shipped on board the British ship John E. Sayre, at and from Iloilo to Montreal." The policy contains the usual clause making the insurer responsible only for so much as the amount of prior insurance may be deficient toward fully covering the property at risk. The sugar was owned by the libellant, consisted of about 2,460 tons, was of the value of about $181,000, and was insured for $166,145 by the Atlantic Mutual Insurance Company. The insurance of the Atlantic Mutual Insurance Company covered the original cost price of the sugar to the libellant and an advance in market price since its purchase by the libellant, and when the insurance with the appellant was affected there had been a still further advance in market price, so that
121 the insurance on profits really covered a profit which has accrued to the libellant when it was affected. The appellant had been informed by the libellant of the insurance upon the cargo. July 6th the ship stranded on the coast of Newfoundland, and ultimately became a total wreck. The master at once made arrange-

ments with local salvors for saving and storing the cargo, agreeing to give them one-half saved. The salvors removed from the ship to their own vessels all the cargo capable of being saved. The master was about to arrange for the transportation to Montreal of the part not going to the salvors when the Atlantic Mutual Insurance Company, which had meantime been informed of the disaster, intervened and took entire control. That company carried out the agreement made by the master with the salvors, paying them an equivalent in lieu of one-half of the sugar saved, and caused the sugar saved to be reconditioned and shipped to Montreal on the steamer Tiber and delivered upon arrival there to the libellant. The expenses incurred by the Atlantic Mutual Insurance Company for reconditioning and forwarding the cargo and adjusting the claims of the salvors, amounted to $10,167. That com-
W. P. pany also paid the ocean freight upon the quantity of cargo saved. It adjusted the loss with the libellant by paying the equivalent of the whole amount of its policy less
W. P. the insured value of the sugar delivered to the libellant. The cargo delivered to the libellant consisted of 307 tons of dry sugar and about 26 tons of wet, and was of the value of about $20,000. There was no notice of abandonment
122 given to the appellant.

Upon these facts the court below was of the opinion that there had been a total loss of the profits insured within the meaning of the contract, and decreed accordingly for the full amount of the insurance.

The subject of insurance was not the libellant's cargo of sugars, but the profits, and the total loss to which the liability of the underwriter was restricted by the contract of the parties was a total loss of profits. That there was no actual total loss of profits is entirely clear. Insurance of profits of a cargo is an engagement by the underwriter that the goods shall not be prevented by the perils insured against from arriving at their destination in a condition for earning profits; and in a valued policy the parties fix, for the purpose of adjusting a loss, the sum which the cargo would earn upon safe arrival by way of profits. Under an insurance of profits a loss of cargo carries with it, of course, the loss of the profits—at least is *prima facie* evidence of their loss; and under a valid policy the assured is entitled to recover the whole insurance upon proof of a total loss of the goods, without proof that any profits would have been made if the goods had arrived. Barclay *v.* Cousins (2 East., 544); Potapsco Insurance Company *v.* Coulter (3 Peters, 222); Mumford *v.* Hallett (1 Johns., 439); Fosdick *v.* North American Marine Insurance Company (3 Day, 103); French *v.* Hope Insurance Company (16 Pickering, 397). "If a part of the goods only are prevented from arriving, it constitutes a partial loss
123 of those interests, according to the construction put upon it in the United States." 2 Phillips on Insurance, sec. 1503. In other words, there can be no actual total loss of profits when part of the goods arrive in condition to earn a profit (Loomis *v.* Shaw, 2 Johns. Cases, 36), notwithstanding a greater part have been

destroyed by the perils insured against. Wain *v.* Thompson (9 S. & R., 115). In such a case, under a valid policy, the insured can only recover of the underwriter the valuation less the profits to be accounted for. French *v.* The Hope Insurance Company, *supra*. It is only in a case of total loss that there is any difference between an open and valued policy. Marshall on Insurance, 268, 618; Bateman's Commercial Law, sec. 1129. In the present case the value of the cargo saved was comparatively insignificant, being only about $10,000, after deducting salvage and expenses, or alternatively something over 150 tons of dry sugar out of 2,460 tons; but part having been saved and actually received by the libellant, there was not an actual total loss. A loss of part of the cargo is a proportional loss on profits.

The question, then, arises whether the libellant was entitled to recover upon the theory of a constructive total loss. A constructive total loss is one where the loss, though not actually total, is of such a character that the assured is entitled, if he thinks fit, to treat it as total by an abandonment. A constructive total loss of cargo may arise by the loss of the ship under circumstances amounting to the destruction of the contemplated adventure, when no part of
124 the cargo can be forwarded by a substituted ship except at a cost beyond the value of the goods. So also it may arise if the damage to the goods, though repairable, cannot be repaired except at an expense greater than their value when repaired, and is thus impracticable from a business point of view. There is also in the United States a conventional rule, originally adopted because of its convenience and certainty, which authorizes an abandonment of ship or cargo when the damage exceeds a moiety of the value and a recovery as for a total loss. An abandonment is indispensable in all cases of constructive total loss, except in those where it could not possibly be of any benefit to the insurer.

By the later authorities it is settled that under a policy insuring a ship or cargo against "total loss only" the assured is entitled to recover upon proof of a constructive total loss. Adams *v.* MacKenzie (13 C. B. N. S., 422); Heebner *v.* Eagle Insurance Company (10 Gray, 131); Green *v.* Pacific Insurance Company (9 Allen, 217); Burt *v.* Brewers and Malsters Insurance Company (78 N. Y., 400); Carr *v.* Security Insurance Company (109 N. Y., 504); Snow *v.* Union Mutual and Marine Insurance Company (119 Mass., 592). It is a reasonable intendment that when an underwriter offers to indemnify the insured against a "total loss" he means to be understood to include any loss which the latter may justifiably treat as total. If he contemplates a more limited liability he can protect himself by insuring against actual or absolute total loss. It does not necessarily follow that these words are to be given the
125 same meaning in a policy upon profits as in a policy upon cargo, and our opinion is that they cannot have the same meaning. How can there be a constructive total loss of profits? In all cases where the destruction of the voyage or the damage to the cargo renders it impracticable, because the outlay will exceed the returns, to go on with the adventure, there is an actual total loss

of profits, though it may be there is only a constructive total loss of the cargo. The moiety rule cannot apply because the profits cannot be separated from the goods themselves, and an abandonment is ordinarily so impracticable that the rule cannot be supposed to have entered into the contemplation of the parties when making their contract. It has never been decided that in case of an insurance of profits an actual partial loss of the profits can be made total by abandonment, and the commentators incline to the contrary view. Mr. Phillips says: "On the whole, it does not seem that the rule of constructive loss of over fifty per cent. of the value is applicable to a policy on profits in favor of the owner of the goods under any circumstances." Phillips on Insurance, 1656. Prof. Parsons, after intimating that an actual partial loss of profits cannot be made constructively total by abandonment, uses this language: "It would seem, therefore, that the fifty per cent. rule would not apply to an insurance on profits unless the insurer (the assured) should waive his right to abandon the goods, and treating the loss of them as partial, abandon the profits separately. In theory this might be possible, but it would be attended with some diffi-
126 culties and can hardly be considered as in fact practicable." 2 Parsons on Marine Insurance, 170, 171. If there can be no constructive loss of profits, the words "against total loss only" in an insurance upon profits can only refer to an actual total loss. They certainly cannot refer to a partial loss. They can have no effect whatever if, as has happened here, the assured can retain part of the profits and yet recover as though all have been lost.

The present contract, in view of the extrinsic facts, was intended to be in substance a second insurance on the goods themselves, "another way of valuing the goods"—Tom *v.* Smith (3 Caines, 247)—to cover the value represented by the advance in market price and not adequately protected by prior insurance. See Ionides *v.* Pender, L. R., 9 Q. B., 531–536. Indeed, it is customary at the place where this contract was made to insure profits under the general denomination of "goods." Pritchett *v.* Insurance Company of North America (3 Yeates, 461). If the cargo itself instead of the profits had been the interest insured, the libellant would have been indemnified only to the extent that the prior insurance might prove insufficient. Insurance is a contract of indemnity and cannot extend to cover the loss in excess of the real loss, and even under a valued policy, where there is a prior insurance, the assured cannot recover upon it more than will, with what has been received from the prior insurance, make up his whole loss. Craige *v.* Murgatroid (4 Yeates, 161); Watson *v.* Insurance Company of North
127 America (3 Wash. C. C., 1); Stevenson *v.* Piscataqua Insurance Company (54 Me., 71); Pleasance *v.* Maryland Insurance Company (8 Cranch, 55). The property at risk was really the cargo, because the profits were merely an excrescence of the goods; and if the contract had not been "against total loss only," the appellant would have been liable only for the deficiency. It cannot be that the insertion of these words were intended to enlarge the extent of the appellant's liability. They were meant to restrict it.

They were used in view of the doctrine expressed by the commentators upon insurance, that there cannot be a constructive total loss of profits. We think the insurance was placed upon the profits instead of upon the cargo directly, and restricted to a total loss only to save any question as to the liability of the appellant for a partial or constructive total loss; otherwise there would have been no occasion for naming that interest and the insurance would have been upon the cargo itself.

By the decree of the court below the libellant has been awarded a recovery which, if collected, would put into its pocket the
W. P. profits realized on the cargo saved, in addition to the amount of the respondent's policy. Irrespective of this consideration, and because it has received the profits on a part of the cargo, we are of the opinion that there has not been a total loss of profits within the meaning of the contract.

The decree is reversed with costs and with direction to dismiss the libel.

128 (Endorsed:) United States circuit court of appeals, second circuit. The Canada Sugar Refining Company, Ltd., appellee, *vs.* The Insurance Company of North America, appellant. Opinion, Wallace, C. J. United States circuit court of appeals, second circuit. Filed Apr. 19, 1898. William Parkin, clerk.

129 At a stated term of the United States circuit court of appeals for the second circuit, held at the court-rooms, in the city of New York, on the 23rd day of April, eighteen hundred and ninety-eight.

Present: Hon. William J. Wallace, Hon. E. Henry Lacombe, Hon. Nathaniel Shipman, judges.

CANADA SUGAR REFINING COMPANY, LIMITED, Libellant and Appellee,
against
THE INSURANCE COMPANY OF NORTH AMERICA, Respondent and Appellant.

The appeal from the decree of the district court of the United States for the southern district of New York, filed and entered in this action on the fifteenth day of June, eighteen hundred and ninety-seven, having come on to be heard, and due deliberation having been had, and on motion of Geo. B. Bonney, Esq., of counsel for the respondent, appellant—

It is ordered, adjudged, and decreed that the said decree so appealed from be reversed, and that the libel be dismissed, with costs in both courts to the said appellant.

And it is further ordered that the mandate of this court issue to the said district court of the United States for the south-
E. H. L. ern district of New York, directing the court to proceed in accordance with this order.

Notice of presentation of this decree for settlement is waived.

BUTLER, NOTMAN, JOLINE & MYNDERSE,
Proctors for Libellant.

Endorsed: U. S. circuit court of appeals for second circuit. Canada Sugar Refining Company, libellant, appellee, *vs.* The Insurance Co. of North America, respondent, appellant. Order for mandate. Hand & Bonney, proctors for appellant, 51 Wall St., New York city. United States circuit court of appeals, s-cond circuit. Filed Apr. 23, 1898. William Parkin, clerk.

130 UNITED STATES OF AMERICA, *Southern District of New York,* } *ss:*

I, William Parkin, clerk of the United States circuit court of appeals for the second circuit, do hereby certify that the foregoing pages, numbered from 1 to 129, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the case of The Canada Sugar Refining Company, libellant, appellee, against The Insurance Company of North America, respondent, appellant, as the same remain of record and on file in my office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this 23rd day of April, in the year of our Lord one thousand eight hundred and ninety-eight, and of the Independence of the said United States the one hundred and twenty-second.

Seal United States Circuit Court of Appeals, Second Circuit.

WM. PARKIN, *Clerk.*

131 UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the honorable the judges of the United States circuit court of appeals for the second circuit, Greeting:

Being informed that there is now pending before you a suit in which The Insurance Company of North America is appellant and The Canada Sugar Refining Company, Limited, is appellee, which suit was removed into the said circuit court of appeals by virtue of an appeal from the district court of the United States for the southern district of New York, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said circuit court of appeals and removed
132 into the Supreme Court of the United States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the tenth day of May, in the year of our Lord one thousand eight hundred and ninety-eight.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

133 [Endorsed:] Supreme Court of the United States. No. 651, October term, 1897. The Canada Sugar Refining Co., Limited, *vs.* The Insurance Co. of North America. Writ of certiorari.

134 United States Circuit Court of Appeals for the Second Circuit.

CANADA SUGAR REFINING COMPANY, LIMITED, Libellant,
against
INSURANCE COMPANY OF NORTH AMERICA, Respondent.

It is hereby stipulated that the copy of the transcript of record heretofore certified by the clerk of this court on or about the 27th day of April, 1898, and filed in the Supreme Court with the libellant's petition for a writ of certiorari, be taken as a return to said writ up to the date of such certification, and that the clerk now make further return only of such proceedings as may have been subsequently had in this court, together with a copy of this stipulation.

Dated New York, May 11th, 1898.

BUTLER, NOTMAN, JOLINE & MYNDERSE,
Proctors for Libellant.
HAND & BONNEY, *Proctors for Respondent.*
BUTLER, STILLMAN & HUBBARD,
Proctors for Lib't in U. S. District Court.

Endorsed: U. S. circuit court of appeals, second circuit. Canada Sugar Refining Co., libellant, against Insurance Company of North America, respondent. Stipulation. Butler, Notman, Joline & Mynderse, proctors for libellant, 54 Wall street, New York city. United States circuit court of appeals, second circuit. Filed May 19, 1898. William Parkin, clerk.

A true copy.

[Seal United States Circuit Court of Appeals, Second Circuit.]

WM. PARKIN, *Clerk.*

135 To the honorable the Supreme Court of the United States:

The record and all proceedings in the cause whereof mention is within made having been lately certified and filed in the office of the clerk of the honorable the Supreme Court of the United States, a certified copy of the stipulation of counsel is hereto annexed, and under the direction of counsel for the appellant said stipulation is certified as a return to this writ.

New York, May 19th, 1898.

[Seal United States Circuit Court of Appeals, Second Circuit.]

WM. PARKIN,
Clerk of the United States Circuit Court of Appeals for the Second Circuit.

136 [Endorsed:] United States circuit court of appeals, second circuit. Canada Sugar Refining Company *vs.* Insurance Company of North America. Return to writ of certiorari.

137 [Endorsed:] Case No. 16,864. Supreme Court U. S., October term, 1898. Term No., 290. The Canada Sugar Refining Co. (Limited), petitioner, *vs.* The Insurance Company of North America. Writ of certiorari and return. Filed June 7, 1898.

Endorsed on cover: Case No. 16,864. U. S. C. C. of appeals, second circuit. Term No., 290. The Canada Sugar Refining Company (Limited), petitioner, *vs.* The Insurance Company of North America. Filed April 30, 1898.